

**SECOND IN A SERIES OF SUBCOMMITTEE HEARINGS
ON SOCIAL SECURITY NUMBER HIGH-RISK ISSUES**

HEARING
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
AND
SUBCOMMITTEE ON OVERSIGHT
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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FEBRUARY 16, 2006
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CONTENTS

	Page
Advisory of February 9, 2006 and revised advisory of February 16, 2006 announcing the hearing	2
WITNESSES	
Internal Revenue Service, Hon. Mark W. Everson, Commissioner	10
Social Security Administration, Hon. James B. Lockhart, III, Deputy Commis- sioner	14
U.S. Department of Homeland Security, Hon. Stewart A. Baker, Assistant Secretary for Policy	20

Social Security Administration, Hon. Patrick P. O'Carroll, Inspector General ..	41
U.S. Government Accountability Office, Barbara Bovbjerg, Director, Edu- cation, Workforce, and Income Security Issues	45
SUBMISSIONS FOR THE RECORD	
Davis, Robert, Rockwall, TX, letter	76
National Consumer Law Center, Boston, MA, letter	76

**SECOND IN A SERIES OF
SUBCOMMITTEE HEARINGS ON
SOCIAL SECURITY NUMBER HIGH-RISK ISSUES**

THURSDAY, FEBRUARY 16, 2006

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittees met, pursuant to notice, at 10:04 a.m., in room 1100, Longworth House Office Building, Hon. Jim McCrery (Chairman of the Subcommittee on Social Security), and Hon. Jim Ramstad (Chairman of the Subcommittee on Oversight) presiding.

The advisory and revised advisory announcing the hearing follow:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE
February 09, 2006
No. SS-11

CONTACT: (202) 225-9263

McCrery and Ramstad Announce Second in a Series of Subcommittee Hearings on Social Security Number High-Risk Issues

Congressman Jim McCrery (R-LA), Chairman, Subcommittee on Social Security, and Congressman Jim Ramstad (R-MN), Chairman, Subcommittee on Oversight of the Committee on Ways and Means, today announced that the Subcommittees will hold the second in a series of Subcommittee hearings on Social Security number (SSN) high-risk issues. The hearing will examine employer wage reporting. **The hearing will take place on Thursday, February 16, 2006, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 11:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

Employers are responsible for collecting, documenting, and submitting a new hire's personal information for Social Security, tax, and immigration purposes. It is the responsibility of the employer and the new hire to submit accurate information so that eligible individuals receive the Social Security benefits due them and that the appropriate taxes are withheld. However, each year, about 4 percent (about 9 million) of Forms W-2 that employers send to the Social Security Administration (SSA) to report employees' wages cannot be associated with the correct worker because they contain name and SSN information that do not match the SSA's records. These "mismatched" W-2s are logged in the SSA's earnings suspense file (ESF).

Research by the SSA Inspector General (IG) and the U.S. Government Accountability Office (GAO) indicates that in recent years, W-2s logged in the ESF increasingly represent instances of SSN misuse or fraud and probable unauthorized work by foreign-born workers. For these reasons, and because improperly posted earnings could prevent individuals from receiving the Social Security benefits due them, the SSA IG has included the size and growth of the ESF among the agency's major management challenges.

Three government agencies are involved in ensuring employers and employees submit accurate employment and wage information, and therefore play a role in addressing the ESF. The IRS is responsible for tax administration and requires employers to provide name, SSN, and tax withholding information on their employees and enforces penalties for failure to provide complete and accurate information for tax purposes, including penalties for mismatched W-2s. The U.S. Department of Homeland Security (DHS) is responsible for preventing and detecting unauthorized work and requires employers to examine documents establishing the identity and work eligibility status of newly hired employees to prevent unauthorized immigrants from using false or stolen SSNs and other documents to illegally gain employment, and also enforces immigration law. The SSA is responsible for recording each worker's career earnings history for benefit purposes and processes W-2s for the Internal Revenue Service (IRS).

The GAO noted in a February 2005 report, that three key factors contribute to ESF postings: (1) the IRS and DHS require employers to collect name, SSN, and employment eligibility information, but do not require employers to independently corroborate the validity of the information presented; (2) IRS regulations establish a “reasonable cause” waiver with minimal requirements and thus the IRS is unlikely to penalize employers, while DHS enforcement efforts against employers who knowingly hire unauthorized workers have been limited in recent years due to further shifting priorities following the events of September 11, 2001; and (3) the SSA and DHS offer employers SSN and employment eligibility verification services free of charge, but these services are voluntary and underutilized. Both the SSA IG and the GAO have made suggestions regarding data sharing between these agencies that could help address the ESF and better target enforcement activities by the IRS and DHS.

In announcing the hearing, Chairman McCrery stated, “The growing earnings suspense file is a symptom of a bigger problem—lack of enforcement of existing laws and lack of effective coordination between the responsible Federal agencies. We must carefully examine all available options and their potential effects on employers, employees, the government, and the economy to ensure we achieve a workable and balanced solution.”

Chairman Ramstad stated, “Accurate wage reporting is important for a number of government programs. It is clear that there are growing problems in this area that need to be addressed, and can only be solved with increased attention and coordination from the three agencies involved.”

FOCUS OF THE HEARING:

The Subcommittees will examine how employers report wages to the SSA, the effects of incorrect wage reports on administration of the Social Security program and tax administration, and enforcement of hiring and wage-reporting responsibilities by the DHS and IRS. The Subcommittees will also examine the current employment eligibility verification process and needed improvements; the potential for data sharing between the SSA, DHS, and IRS to enhance detection and prevention of unauthorized work; and options to improve wage reporting.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “109th Congress” from the menu entitled, “Hearing Archives” (<http://waysandmeans.house.gov/Hearings.asp?congress=17>). Select the hearing for which you would like to submit, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the on-line instructions, completing all informational forms and clicking “submit” on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You **MUST REPLY** to the email and **ATTACH** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Thursday, March 2, 2006. **Finally**, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

* * * CHANGE IN TIME * * *

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE
February 16, 2006
SS-11 Revised

CONTACT: (202) 225-1721

Change in Time for the Second in a Series of Subcommittee Hearings on Social Security Number High-Risk Issues

Congressman Jim McCrery (R-LA), Chairman, Subcommittee on Social Security, and Congressman Jim Ramstad (R-MN), Chairman, Subcommittee on Oversight of the Committee on Ways and Means, today announced that the second in a series of Subcommittee hearings on Social Security number high-risk issues, previously scheduled for 11:00 a.m. on Thursday, February 16, 2006 in room 1100 Longworth House Office Building, **will now be held at 10:00 a.m.**

All other details for the hearing remain the same. (See Subcommittee Advisory No. SS-11, dated February 9, 2006).

Chairman MCCRERY. The hearing will come to order. Good morning, everyone. Welcome to our Joint Subcommittee on Social Security and Subcommittee on Oversight hearing on employer wage reporting. Today's hearing is the second in a series of hearings on high-risk issues related to Social Security Numbers (SSNs). Today, we will examine the longstanding and troubling issue of how some employers fail to report wages with accurate SSNs and the inadequate Federal response. Wages that are reported under

incorrect or false SSNs are logged into a database within the Social Security Administration (SSA) called the Earnings Suspense File (ESF). This file has records of earnings that could not be linked to the correct worker. Employee data was first entered into the ESF in 1937, when wages became subject to Social Security taxes. Between 1937 and 2003, nearly 255 million wage records for about \$520 billion in earnings, accumulated in the ESF.

The ESF is not just an administrative headache or a bureaucratic wasteland. It is a symptom of more serious problems. Research by the SSA's Inspector General (IG) and the U.S. government Accountability Office (GAO), indicates evidence of SSN misuse and unauthorized work by foreign-born workers. For example, according to a GAO study of SSNs frequently appearing in the ESF, wages claimed by foreign-born workers who had earnings before they were issued an SSN have grown over time, from an average of about 7 percent for years 1937 to 1985, to 47 percent for the year 2003.

Inaccurate SSN reporting has repercussions for workers' Social Security benefits, tax compliance, and immigration law compliance. Three government agencies play a role when employer wage reports end up in the ESF. The SSA is responsible for accurately keeping track of workers' earnings for benefit purposes. The U.S. Internal Revenue Service (IRS) is responsible for enforcing penalties to ensure employers report wages accurately for tax and benefit purposes. The U.S. Department of Homeland Security (DHS) is responsible for ensuring unauthorized workers do not work using false information that results in their earnings records ending up in the ESF.

Unfortunately, the problem of a growing ESF has existed for decades. The responsible government agencies have been slow to work together toward a comprehensive solution. In addition, they have not adequately enforced the laws and regulations that would prevent inaccurate wage reporting. Last December, the House of Representatives passed legislation, H.R. 4437, the "Border Protection, Anti-Terrorism, and Illegal Immigration Control Act of 2005," which would take action where government agencies have not by requiring employers to verify the SSNs and employment eligibility of their employees with SSA and DHS.

Today, we need to hear about what actions Federal agencies can and will take to address inaccurate wage reporting. We also want to examine options that Congress should consider to achieve a balanced and workable approach to improve the accuracy of wage reporting without unduly burdening employees, employers, and our economy. I want to thank all of our witnesses for coming today, and I look forward to your testimony. Now, I would like to ask my colleague, the Ranking Member, Mr. Levin, for any comments he may make.

[The prepared statement of Chairman McCrery follows:]

Opening Statement of The Honorable Jim McCrery, Chairman, and a Representative in Congress from the State of Louisiana

Good morning and welcome to our joint Social Security Subcommittee and Oversight Subcommittee hearing on employer wage reporting. Today's hearing is the second in a series of hearings on high-risk issues related to Social Security numbers, or SSNs. Today, we'll examine the longstanding and troubling issue of how some

employers fail to report wages with accurate SSNs and the inadequate Federal response.

Wages that are reported under incorrect or false SSNs are logged into a database within the Social Security Administration, called the Earnings Suspense File. This file has records of earnings that could not be linked to the correct worker. Employee data was first entered into the suspense file in 1937, when wages became subject to Social Security taxes. Between 1937 and 2003, nearly 255 million wage records for about \$520 billion in earnings accumulated in the suspense file.

The suspense file is not just an administrative headache or a bureaucratic wasteland; it is a symptom of serious problems. Research by the Social Security Administration's Inspector General and the Government Accountability Office, or GAO, indicates evidence of SSN misuse and unauthorized work by foreign-born workers.

For example, according to a GAO study of SSNs frequently appearing in the suspense file, wages claimed by foreign-born workers who had earnings before they were issued an SSN have grown over time, from an average of about 7 percent for years 1937–1985 to 47 percent for the year 2003.

Inaccurate SSN reporting has repercussions for workers' Social Security benefits, tax compliance, and immigration law compliance. Three government agencies play a role when employer wage reports end up in the suspense file. The Social Security Administration is responsible for accurately keeping track of workers' earnings for benefit purposes. The Internal Revenue Service is responsible for enforcing penalties to ensure employers report wages accurately for tax and benefit purposes. The Department of Homeland Security is responsible for ensuring unauthorized workers do not work using false information that results in their earnings records ending up in the suspense file.

Unfortunately, the problem of a growing suspense file has existed for decades. The responsible government agencies have been slow to work together toward a comprehensive solution. In addition they have not adequately enforced the laws and regulations that would prevent inaccurate wage reporting.

Last December the House of Representatives passed legislation, the *Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005* (H.R. 4437), which would take action where government agencies have not, by requiring employers to verify the SSNs and employment eligibility of their employees with the Social Security Administration and the Department of Homeland Security.

Today, we need to hear about what actions Federal agencies can and will take to address inaccurate wage reporting. We also want to examine options that Congress should consider to achieve a balanced and workable approach to improve the accuracy of wage reporting without unduly burdening employees, employers and our economy.

Thank you for coming today, and I look forward to your testimony.

Mr. LEVIN. Mr. Chairman, I have a statement. Let me submit it for the record. I take it without objection.

[The prepared statement of Mr. Levin follows:]

Opening Statement of The Honorable Sander M. Levin, a Representative in Congress from the State of Michigan

Today's hearing will examine a long-standing challenge at the intersection of immigration law and tax collections which may be growing. GAO and the Social Security Inspector General report an increasing number of W-2 forms being submitted to the IRS and the Social Security Administration in which the employee's name and Social Security number do not match. Some of these "no matches" are honest mistakes, but others represent employees working under false names or Social Security numbers, either because they are illegal immigrants or to commit other fraud.

There are larger immigration issues surrounding the failure of some employers to verify work status for their employees, either at the time or later, when they are informed that the employee's name and Social Security number do not match. Those issues are out of the jurisdiction of the Ways & Means Committee, although I am pleased to see that the Department of Homeland Security will testify today and may be able to answer our questions about overall enforcement of immigration laws.

The issue before the Ways & Means Committee is whether the Social Security Administration and the Internal Revenue Service should share personal information currently protected by taxpayer privacy laws with the Department of Homeland Security in order to identify those in this country and working illegally, and if they

did, what burdens that would impose on the agencies and their collection of income and payroll taxes.

I hope our witnesses today will help us explore two key issues.

1. First, what impact would such information sharing have on the effectiveness of our tax collection efforts?
2. Second, would the sharing of taxpayer information substantially improve our enforcement of immigration laws?

Chairman MCCRERY. Thank you.

Mr. LEVIN. I would just quickly summarize it, because we want to get on with the testimony, and I am really very glad that all three of the agencies are represented here today.

We know that data regarding the no—the lack of match in the reporting. We also I believe have some idea as to what each of the three agencies is supposed to be doing, what your primary function is.

So the question today I think, in part, is whether there is an adequate meshing of your responsibilities and of the information that you have; whether a primary problem in terms of our immigration policies relates to the interaction among the three agencies; what impact there would be on each of your agencies if there were a further requirement of the sharing of information.

So we look forward to it. This is not a new problem, and the immigration aspect of this is not a new issue. We have been dealing with this for years, and I hope we can approach this issue with both determination and also with some care. Thank you.

Chairman MCCRERY. Thank you, Mr. Levin. Any Member wishing to submit a statement for the record may do so, without objection. Mr. Ramstad, Chairman of the Subcommittee on Oversight.

Chairman RAMSTAD. Thank you, Mr. Chairman. As Chairman of the Subcommittee on Oversight, I look forward to this second joint hearing in the last 2 years on the topic of Employer Wage Reporting. Thank you, Chairman McCrery, for your leadership in this area and for summarizing why we are here today and also summarizing the last hearing in 2004, when we heard there was a growing problem with the misuse of the SSN and a failure by employers to accurately report the names and SSNs of employees. As we all know, this was contributing to a growing account of mismatched wages at SSA called the Earnings ESF.

The message of the hearing 2 years ago was that the three agencies involved in the process, who are represented very well here today—the SSA, the IRS, and the DHS, needed to work better together to address the problem.

We are here today to see in the area of information sharing if progress has been made. This is an important problem for a number of reasons. When wages are reported to incorrect SSNs, it can prevent individuals from receiving the Social Security benefits that are due them, creating a number of other problems for other government agencies involved, as I think we all understand.

I just want to highlight, briefly, a couple of my concerns at the outset of the hearing and look forward to the responses from the witnesses. First, why is not more being done to enforce the laws and regulations that require accurate wage reports from employers. It appears that we have laws on the books that are not being en-

forced. In fact, it also appears that the IRS regulations make it virtually impossible to impose and collect penalties on employers who report inaccurate SSNs for their employees. If this is so, we need to know what can be done to correct this problem and remove this barrier to enforcement.

Second, I would like to know if the three Agencies—SSA, the IRS, and DHS—are satisfied with the current level of information sharing with respect to name and SSN mismatches; in other words, if progress is being made and if it is satisfactory progress in terms of the all critical information sharing. If not, I think this panel needs to know what additional information they would like to access and why. Finally, there have been proposals to require that employers do more to verify the eligibility of their employees for work.

I also look forward, gentlemen, to your views on the impact of expanded verification. Let me again thank the witnesses for being here today. I look forward to hearing from you and working with you to address these important problems. Thank you again, Mr. Chairman, for your leadership.

[The prepared statement of Chairman Ramstad follows:]

Opening Statement of The Honorable Jim Ramstad, Chairman, and a Representative in Congress from the State of Minnesota

Today, the Subcommittees on Oversight and Social Security are holding their second joint hearing in the last two years on the topic of employer wage reporting. In 2004, we heard that there was a growing problem with the misuse of the Social Security number and a failure by employers to accurately report the names and Social Security numbers of their employees, which was contributing to a burgeoning account of mismatched wages at the Social Security Administration called the Earning Suspense File. The message of the hearing was that the three agencies with a stake in this process—the SSA, the IRS, and the Department of Homeland Security—needed to work better together to address the problem.

In many ways, today's hearing seems like, in the words of Yogi Berra, "déjà vu all over again." Little progress has been made since the Subcommittees last met. The Earnings Suspense File continues to grow, little enforcement action is being taken, and there is still a clear need for the IRS, SSA, and DHS to improve their coordination.

This is an important subject for a number of reasons. When wages are reported to incorrect Social Security numbers it can prevent individuals from receiving the Social Security benefits due them and create a number of other problems for the government agencies involved. In addition, in many cases, employees are providing inaccurate personal information to employers because they are illegal aliens, and do not have valid Social Security numbers, and do not have permission to work.

I want to highlight a couple of my major concerns at the outset of the hearing.

- First, I want to know why the IRS does not do more to enforce the laws that require accurate wage reports from employers. We have laws on the books that the IRS has apparently never enforced. In fact, IRS regulations appear to make it impossible to impose and collect penalties on employers who report inaccurate Social Security numbers for their employees. I would like to know why this is so, and what the IRS intends to do about it.
- Second, I would like to know if the SSA, IRS, and DHS are satisfied with the current levels of information shared about name and Social Security number mismatches.

If not, I would like to know what additional information they would like to access, and why.

- Finally, there have been proposals to require that employers do more to verify the eligibility of their employees for work. I look forward to the witnesses' views on the impact of expanded verification.

I want to thank the witnesses, and I look forward to making some progress in addressing this growing problem.



Chairman MCCRERY. Thank you, Mr. Chairman. Now, we will hear from the Ranking Member of the Subcommittee on Oversight, Mr. Lewis.

Mr. LEWIS OF GEORGIA. Thank you very much, Mr. Chairman. The Subcommittee on Oversight joined the Subcommittee on Social Security in today's hearing to discuss issues involving SSNs that do not match employees' names when submitted to SSA and the IRS. The Subcommittee held a similar hearing on this subject just 2 years ago. Under current law, employers are required to obtain the name and SSN of each worker so that wage income and tax withholding amounts can be sent to the IRS and SSA for tax and Social Security benefit purposes.

It is important that this information be correct for the processing of tax returns and recording of Social Security benefits. The IRS rejects tax returns and SSA puts earning records in a ESF when workers' names and SSNs do not match. Today, I welcome back Commissioner Everson and Deputy Secretary Lockhart to discuss these issues again with us. In addition, I welcome Assistant Secretary Baker from DHS, Inspector General O'Carroll from SSA, and Barbara Bovbjerg from GAO.

Some propose that the DHS have access to more SSA and IRS information to target employers involving illegal workers for immigration enforcement purposes and to mandate that employers verify that all individuals they employ are authorized to work in the U.S. Mr. Chairman, I look forward to the testimony of these witnesses, and I thank them for being here. Thank you, Mr. Chairman.

[The prepared statement of Mr. Lewis of Georgia follows:]

**Opening Statement of The Honorable John Lewis, a Representative in
Congress from the State of Georgia**

The Oversight Subcommittee is joining the Social Security Subcommittee in today's hearing to discuss issues surrounding Social Security numbers that do not match employees' names when submitted to the Social Security Administration (SSA) and Internal Revenue Service (IRS).

The Subcommittee held a similar hearing on this subject two years ago. Under current law, employers are required to obtain the name and Social Security number of each worker so that wage income and tax withholding amounts can be sent to the IRS and SSA for tax and Social Security benefit purposes. It is important that this information be correct for the IRS's processing of tax returns and the SSA's recording of Social Security benefits. The IRS rejects tax returns and the SSA puts earning records in a "suspense file" when workers' names and Social Security numbers do not match. I welcome back IRS Commissioner Everson and SSA Deputy Secretary Lockhart to discuss these issues again with us.

An additional witness has been added to our witness list this year. I welcome Assistant Secretary Baker of the Department of Homeland Security (DHS). Some propose that the DHS have access to more SSA and IRS information (1) to target employers involved in hiring illegal workers for immigration enforcement purposes and (2) to mandate that employers verify all individuals' authorization to work in the U.S. before hiring. I will be interested in your views on these and other issues raised in your testimony.

Thank you.

Chairman MCCRERY. Thank you, Mr. Lewis. Now, we will welcome our first panel of the day: the Honorable Mark W. Everson, Commissioner, IRS; the Honorable James B. Lockhart, III, Deputy

Commissioner of SSA; the Honorable Stewart A. Baker, Assistant Secretary for Policy at DHS.

Welcome, gentlemen. Thank you very much for appearing before us today, and if you would, your entire written testimony will be submitted for the record, but if you could summarize that in about 5 minutes, we would appreciate that. We will begin with Mr. Everson.

**STATEMENT OF THE HONORABLE MARK W. EVERSON,
COMMISSIONER, INTERNAL REVENUE SERVICE**

Mr. EVERSON. Thank you Chairman Ramstad and McCrery, Ranking Members Lewis and Levin. Now, I mentioned the Oversight Committee first, sir, just because that is out of pure self-interest. I appreciate the opportunity to appear before you today. I commend you for your continuing interest in SSN high-risk issues. Simply stated, there are two important public policy interests at issue today. As a former Deputy Commissioner of Immigration, I know that a sound system of immigration is one which allows only those here legally to remain in our country.

On the other hand, in my job as IRS Commissioner, we want our share of your money whether or not you earned it legally or illegally. Two years ago, you convened a hearing where we talked about the I-10 program. Since that time, the improvements to that program, which we spoke about, have had the desired effect. I-10s are increasingly associated with the filing of tax returns and less a source document for identity creation. That is good news for tax administration.

Nevertheless, while our actions have helped tax administration in the sense that individuals who might not otherwise do so are filing tax returns and participating in the tax system, they have not done anything to reduce SSN mismatches. As both Commissioner Lockhart's written testimony and my own indicate, there are millions of mismatches each year. I would make two points about the mismatches. The first is that over 50 percent of the mismatches occur in just four states—California, Texas, Florida, and Illinois. Almost 29 percent of the mismatches take place in California alone; whereas, only 12 percent of 1040s are filed in that State.

Secondly, I would note that about 75 percent of the mismatched W-2s report wages of less than \$10,000. In fact, the average wage of all mismatches is only about \$6,700 annually. The current process for following up on mismatches lags well behind the date of hire for the employee in question. Many of the employees generating a mismatch letter have long since terminated their employment. The system as it operates today is simply not timely. The IRS has been asked whether we could do a better job of issuing penalties for employers who fail to include accurate SSNs or TINs on their employment returns. Under the law, we may impose a penalty of \$50 on an employer for each W-2 or 1099 that omits the required information or includes an inaccurate SSN or TIN, unless the filer shows reasonable cause for the omission or inaccuracy.

The law, however, places the burden on the employee or payee to provide the employer or payor with an accurate SSN or TIN. This is an important distinction. The GAO and others have suggested that we reexamine our due diligence or reasonable cause

standards. I am also aware that there are calls to increase information sharing amongst Federal agencies.

As Members of Ways and Means well know, the standards of 6103 pertaining to the protection of taxpayer information are quite strict. Any effort to improve employer verification through increased information sharing should take into account the implications to 6103 and taxpayer privacy. Thank you.

[The prepared statement of Mr. Everson follows:]

**Statement of The Honorable Mark W. Everson, Commissioner,
Internal Revenue Service**

Chairman Ramstad, Chairman McCrery, Ranking Members Lewis and Levin, and Members of the Subcommittees on Oversight and Social Security, thank you for the opportunity to once again appear before you to discuss these issues.

I would like to do two things this morning. First, I wish to try to frame the issues, at least from an IRS perspective. Second, I want to discuss in more detail IRS's role in this process and what we have done and are doing internally relative to the issues that surround the mismatching of Social Security Numbers (SSN).

Framing the Issues

Perhaps the most difficult part of these issues is framing them properly and understanding fully the different, yet sometimes complementary, roles performed by the Social Security Administration (SSA), the U.S. Department of Homeland Security (DHS) and the Internal Revenue Service (IRS).

We at the IRS support and appreciate the jobs being done at SSA in maintaining and protecting the Social Security Trust Funds and at DHS in enforcing our immigration laws, but our function is tax administration. Our job is to make sure that everyone who earns income within our borders pays the proper amount of taxes, even if they may not be working here legally. If someone is working without authorization in this country, he or she is not absolved of tax liability. Instead of an SSN to file a tax return, that person frequently uses an Individual Taxpayer Identification Number (ITIN).

Almost two years ago, these same Subcommittees held a hearing where I talked about our ITIN program. While I understand that is not the subject of this hearing, it is important to understand that the ITIN program is bringing taxpayers into the system. In calendar year 2005, we had 1.6 million applications for ITINs, which were accompanied by 1.4 million returns. The number of returns associated with ITIN applications is up 40 percent from calendar year 2004.

I know many Members of these Subcommittees are vitally concerned with the issues surrounding mismatching names and social security numbers and I am well aware of various legislative proposals to help address this problem. These proposals range from requiring the employers to check the validity of a SSN prior to hiring, to increasing penalties on employers who fail to submit a proper SSN for an employee, to requiring more information sharing between Federal agencies. Whatever the ultimate solution, we have to try to minimize the negative consequences on employers, employees and our national economy.

As you know, comprehensive immigration reform—including border security, interior enforcement, and a temporary worker program—is a top Administration priority. The Administration believes that worksite enforcement is critical to the success of immigration reform. Further, as immigration laws are enforced, the Administration believes that comprehensive immigration reform also requires us to improve those laws by creating a temporary worker program that rejects amnesty and relieves pressure on the border.

As the Commissioner of the IRS, it is not my role to advocate public policy changes. However, as a former Deputy Commissioner at INS, I am sensitive to the need for a system of immigration that functions effectively. I can, also, if you like, talk about the impact of various proposals on tax administration.

IRS's Role in the Mismatch Program

Each year, employers send their W-2s and W-3s into the SSA by February 28 (or March 31 if filed electronically). The SSA processes and then attempts to reconcile any mismatches. They then send the information to the IRS on a weekly basis. IRS culls out any unusable records and those W-2s which are not related to the current tax year. For Tax Year (TY) 2004, the resulting IRS file contained more than 231 million W-2s from the SSA. This represents a decline of approximately 6.5 percent from the corresponding file for TY 2000. At this point, we are unable

to explain this decline in the number of W-2s, but it is an area of concern for tax compliance, particularly if it represents misclassification of employees as independent contractors or otherwise. The decline in the number of W-2s has been accompanied by a corresponding decline in the number of mismatches that could not be validated.

Of the 231 million W-2s in IRS's TY 2004 file, approximately 223 million had matching names and SSNs. Some of these matches resulted from SSA's successful use of their techniques for resolving mismatches. For the balance of approximately 8 million TY 2004 W-2s for which there was no valid match, IRS used several additional methods to match the numbers. We were able to match approximately 60 thousand more names with SSNs, leaving a balance of about 7.9 million W-2s where there is no valid name and social security number match.

To help correct SSN mismatches, the SSA sends letters to both employers and employees asking that they take steps to match the names with the SSNs. These letters do not go to all employers. Letters are sent to employers who submit a wage report containing more than 10 Forms W-2 that SSA cannot process, and the mismatched forms represent more than one-half of one percent ($\frac{1}{2}$ percent) of the total Forms W-2 in the report. In TY 03, the SSA sent over 121,000 such letters to employers, inquiring about 7.2 million invalid W-2s. Thus, there is no letter sent to the employers of the other 0.7 million mismatches.

There are two interesting aspects to these mismatches. The first is geographical. Over 50 percent of the mismatches are found in four states, California, Texas, Florida and Illinois. California has the far greatest number of mismatches totaling nearly 2.3 million, or approximately 29 percent of the mismatch total.

The second is economic. About 75 percent of all mismatched W-2s report wages of less than \$10,000. If we focus only on those mismatched W-2s with no withholding, the percentage increases to 90 percent. Only about 2 percent of all W-2s with invalid SSNs report wages greater than \$30,000. In fact, the average wage for all mismatches is only about \$6700 annually. Bear in mind, that many employees receive more than one W-2 in a tax year, so these numbers may not reflect gross income.

From a tax administration perspective, we know that for TY 2004 there were approximately \$53 billion in wages reported on W-2s with invalid social security numbers, with about a quarter of that amount, or \$13.3 billion, on W-2s with no withholding. About 56 percent of the \$53 billion came from W-2s reporting wages between \$10,000 and \$30,000.

On the high end, only about 1 percent of the wages (\$0.5B) were reported on mismatched W-2s showing wages in excess of \$100,000. Average wages on these W-2s were about \$303,000, and about 30 percent of the mismatches in this category had no withholding.

Legal Requirements on Employers

It is important to point out that the SSA has no enforcement power, and cannot impose penalties on employers for failure to correct SSN mismatches. IRS, however, does have enforcement power and can assess penalties. Therefore, it might be helpful if I walk you through our legal authority.

Under section 6041 and 6011 of the Internal Revenue Code (IRC) employers and other payors must include correct SSNs or Taxpayer Identification Numbers (TINs) on forms W-2 reporting wages or salaries paid to employees.

Under section 6721, we may impose a \$50 penalty on an employer for each W-2 or 1099 that omits or includes an inaccurate SSN/ TIN unless the filer (employer, other payor, etc.) shows reasonable cause for the omission or inaccuracy. The maximum penalty for any employer or payor in a calendar year is \$250,000. If the violation is deemed to be willful, the fine is the greater of \$100 or 10 percent of the unreported amount per violation with no maximum.

Section 6109 places the burden on the employee or the payee to provide the employer or payor with an accurate SSN or TIN. This is an important distinction because the employer can have any penalty imposed for failing to include an accurate SSN or TIN on the return abated, if the employer made an initial and, if necessary, annual request that the payee provide an accurate SSN/TIN, or establishes that due diligence was otherwise used, such as by obtaining a statement from the employee under penalties of perjury that the SSN or TIN is accurate.

As you can see, what is important here is that the employer or payor makes a request, or repeats a request, for an accurate SSN or TIN. If he does, he has performed due diligence and has reasonable cause to believe the SSN or TIN is correct. As a result, under section 6724, a penalty assessed against an employer under section 6721 will be abated. These liberal due diligence standards for employers serve

an important role in tax administration. Imposing harsh or inflexible penalties on employers could drive them into the cash economy, with no reporting at all.

As I indicated when I was before these two Subcommittees in 2004, because of the reasonable cause provision in the tax law, I am unaware of IRS sustaining any penalty against an employer for failure to provide an accurate SSN for an employee. That has not changed.

Problems Associated With Sustaining Penalties

The fact that we have not sustained a penalty against an employer probably shocks many of you. To some extent, it shocks me as well.

The U.S. Government Accountability Office (GAO) and others have suggested that perhaps we should re-examine our due diligence or reasonable cause standard and we have pledged to look at that with input from SSA and DHS. However, based on what we know now both about the employer base and the employees subject to mismatches, we have been unable to settle on any specific changes in the reasonable cause standard that might be warranted. However, we will continue to look at it and evaluate it in light of any new information.

For example, our Small Business/Self-Employed (SB/SE) division recently conducted its own analysis of a small number of employers with a high percentage of mismatches. What we found points out some of the difficulties associated with either assessing or sustaining a penalty.

From the information provided by SSA on invalid SSNs, SB/SE selected a group of 297 businesses, all of whom had reported invalid social security numbers for 75 percent of their employees. In essence, these were the worst of the worst in terms of invalid numbers. The limited size of this study limits its usefulness, but it does provide some interesting information.

IRS sent a survey to each of these employers with instructions to complete it and return it within 30 days. We identified our first problem when the address we had for 58 companies on the list was either incorrect or the questionnaire was returned as undeliverable.

Another 48 companies did not respond at all. This was a bad move on their part in that we told them in the cover letter that if they failed to respond to the questionnaire that they would be subject to penalties. We are already in the process of starting these examinations.

That left us with a sample of 191 companies that responded in some way to the questionnaire.

Of these 191 companies, 57 percent were in three industry categories, agriculture (30 percent), temporary labor (18 percent) and janitorial (9 percent).

We asked several questions about hiring practices and verification procedures. Specifically, 76 percent of the respondents said they asked for a social security card. Thirty-eight percent said they would not hire someone who did not have a social security card.

This number in particular intrigues me, as I am sure it does you. Remember these are companies in which 75 percent of the SSNs on the employee W-2s were invalid. If, in fact, these employers did demand a social security card prior to hiring, then it may point to the widespread availability of forged or fake social security cards.

When we asked these employers what steps they took to verify the SSN provided by their employees, more than half said they took no action at all. Only eight percent said they used the Social Security Administration's telephone verification system, and only four percent said they used the SSA's electronic verification system.

On average, companies in the survey had an annual turnover rate of 125 percent. The highest turnover rate was more than 400 percent. Undoubtedly, this makes it very difficult to follow up with employees when SSA notifies them of the SSN/name mismatch.

Contributing to this problem is the lag time between when an employee is hired and when the employer learns that he/she has been given an invalid number.

For example, an employee who is hired today will complete his or her W-4 form (Employee's Withholding Allowance Certificate) and I-9 (required by DHS). Typically these are held on file in the employer's office.

At the end of this year, the employer will send the employee's W-2 along with those of his or her other employees to the SSA. These are due at SSA by February 28 (or March 31 if filed electronically). SSA begins to sort the forms and within a few weeks concludes that there is a mismatch between the name and social security number given by the employee. A letter is then sent by SSA, first to the employee and then later to the employer (assuming the employer meets the SSA screening criteria), telling them that the SSN provided by the employer is invalid.

In this scenario, a year or more has passed before the employer learns for the first time that the number given by an employee is bad. If a business has a high turnover rate then it is unlikely the employee is still with the same company.

The lag time is even greater for the IRS. The earliest we will know of a possible mismatch will be in June when we begin our own efforts to correct the mismatches that have been identified by SSA. We will scrub the numbers through our filters for the rest of the year to see if we can find a match. As a result, two years have passed from the time the employee was originally hired before we even begin to think about doing some type of examination of the employer.

General Conclusions

Based on all of the work we have done in the mismatch area, we can draw some general conclusions:

- Individuals in the mismatch file tend to be low wage earners. Approximately 75 percent earn less than \$10,000 and 98 percent earn less than \$30,000.
- There is withholding on nearly 50% of the wage earners in the mismatch file but there tends to be significantly less withholding among the mismatches as compared to returns with valid social security numbers.
- The analysis of our limited group of 191 companies shows that most of the employers (57 percent) fall into three business groups, agriculture, temporary employment and janitorial.
- That same small group experienced extremely high turnover, making it likely that by the time an employer is advised of a mismatch, the employee has already left the company.
- Employers may or may not be notified that there is a mismatch, depending on whether they meet SSA's screening criteria.
- There does not appear to be much potential to collect significant penalties from employers under the current system because they can easily show due diligence.

Considerations Concerning Changes to Current Penalty Program

We continue to consider ways to improve the current system and stand ready to work with our colleagues at SSA and DHS in any manner we can. For instance, we just announced a partnership between the IRS and the United States Citizenship and Immigration Services (USCIS) to conduct a pilot test to identify options to overcome the challenges surrounding data sharing between the two agencies. The GAO in a recent report indicated that data sharing between IRS and USCIS can help improve (1) tax compliance if businesses applying to sponsor immigrant workers are required to meet tax filing and payment requirements, and (2) the accuracy and timeliness of USCIS's immigration eligibility decisions if it obtained tax data from IRS to help insure business sponsors meet eligibility criteria. The project has a June 2007 implementation date.

In addition, we would, of course, work to execute any changes Congress determines to bring into effect. We would, however, call two issues to your attention that could be problematic with certain changes in the current regime.

First, any significant change requiring improved information sharing between Federal agencies or between Federal agencies and employers must account for protections found in section 6103 of the Internal Revenue Code. This section protects taxpayers from having their tax return information shared with third parties.

Second, we must make sure that any change in the current system encourages the type of behavior that we desire from both employees and employers. Imposing procedures on employers that are too stringent or requiring too much documentation from employees may have the effect of driving certain economic activities "underground". At least now we are collecting some taxes in these areas and we are working to collect even more.

Thank you for inviting me to testify this morning. I will be happy to take any questions you may have.

Chairman MCCRERY. Mr. Lockhart.

STATEMENT OF THE HONORABLE JAMES B. LOCKHART III, DEPUTY COMMISSIONER OF SOCIAL SECURITY, SOCIAL SECURITY ADMINISTRATION

Mr. LOCKHART. Chairman Ramstad, Chairman McCrery, Ranking Members Levin and Lewis, and Members of the Subcommittee,

thank you all for asking me here today to discuss the steps that SSA has taken to strengthen the wage reporting process. I will summarize my written statement with a focus on our efforts to reduce the Earnings ESF and on our cooperative efforts with other Federal agencies.

The primary purpose for the SSN—for assigning a number and issuing a card is the same today as when we started doing this in 1936: it is to accurately report and record the earnings of people who work in jobs covered by Social Security. Earnings posted to an individual SSN are used to determine eligibility for and the amount of Social Security benefits for that worker and for his/her family. In order for wages to be credited, the worker's name and SSN on the W-2 must match the name and number on our records. We process about 235 million W-2 reports annually, coming from about 6.6 million employers, and that represents a total wage amount of about \$4 trillion.

To prevent mistakes, we encourage employers to use our employee verification system or our newer Social Security Number Verification System (SSNVS), the latter system permits employers to verify via the Internet the accuracy of employees' names and SSNs. This service was expanded to all employers last June. We estimate between these two systems and the Basic Pilot, which I will talk about later, we have had 67 million verifications last year. About one million was from the Basic Pilot. After the W-2s are filed, we process them. We have about 10 percent invalid names and Social Security combinations at that point. We have a whole series of computer routines to identify commonly occurring errors. Using these routines, we post more than half of this 10 percent to the correct SSN. The remainder is recorded in the ESF.

For the latest year, for which we have information, which is taxpayer year 2003. As of October 2005, about 8.8 million or 3.7 percent of the total W-2s remained in the ESF. They represent about \$58 billion in wages and \$7.2 billion in payroll taxes. I hasten to add that those payroll taxes have been credited to the trust funds. We carry out a number of activities to further reduce the ESF. For example, we notify all employees when we cannot process their W-2s due to mismatches and ask them to work with us to resolve the problems. We also notify employers with a significant number of mismatches. The intent of these no-match letters is to improve the accuracy of wage reporting. We also request the employer to submit corrected W-2s so that the future earnings will be accurate.

Beginning in April 2003, we implemented a new process that we estimate will electronically find another 30 million matches. Already this new process using innovative techniques and the worker's detailed earnings record has matched 11 million W-2s with the correct earnings record. Despite all these efforts, the file continues to grow. Our IG, Pat O'Carroll, whom you will hear from later, and many others believe that this growth is due to unauthorized work by non-citizens and that stronger worksite enforcement is needed. President Bush has called for comprehensive immigration reform, including stronger border security, strengthened worksite enforcement, and a temporary worker program. Our ability to improve our employee wage reporting process depends on cooperation with other

Federal partners, such as DHS and the IRS, who are with us today, and the U.S. Department of State.

An important cooperative effort is the Basic Pilot, which is a nationwide system in which SSA supports DHS in assisting employers to confirm employment eligibility for newly hired workers. Participating employers register with DHS to use its automated system and to provide employee information to SSA to verify the name, date of birth, and SSN. If we cannot also verify U.S. citizenship, DHS reviews whether the employee is a work-authorized non-citizen. In all cases, they notify the employer of the employee's current work status.

In conclusion, I want to thank you for inviting me here today. I look forward to working with you to continue to strengthen Social Security's employer wage reporting process, and I will be happy to answer any questions.

[The prepared statement of Mr. Lockhart follows:]

Statement of The Honorable James B. Lockhart, III, Deputy Commissioner of Social Security, Social Security Administration

Chairman McCreery, Chairman Ramstad, Ranking Members Levin and Lewis, and members of the Subcommittees:

Thank you for asking me to be here today to discuss the steps the Social Security Administration (SSA) has taken to improve and strengthen the wage reporting processes and our efforts to reduce the size of the earnings suspense file, which I will describe in more detail later. SSA is committed to ensuring that we maintain accurate earnings records for all workers, and we have taken vigorous steps to improve our processes.

Purpose of the SSN

The primary purpose for which SSA assigns a number and issues a card is the same today as it was at the program's inception in 1936: to accurately report and record the earnings of people who work in jobs covered by Social Security. Of course, the key to tracking a worker's earnings is the Social Security number (SSN).

SSA has assigned over 433 million SSNs since 1936. Earnings posted to an individual's SSN are used to determine eligibility for and the amount of Social Security benefits to which that worker and his or her family may be entitled. Ultimately, the SSN is also used to track payment of those benefits.

The Social Security card was not designed to be a personal identification document—that is, the card does not establish that the person presenting the card is actually the person whose name and SSN appear on the card. Although the card itself is counterfeit resistant, it does not contain information that would allow the card to be used as proof of identity.

Over time, SSA developed different tools to assist employers in verifying a worker's SSN. We encourage employers to use any of these processes to improve the accuracy of wage reports so that Social Security can properly credit employees' earnings records. In addition, the use of verification processes minimizes the employer's processing costs and reduces the number of forms that an employer may need to submit.

Initially, SSA used a manual process for verifications, which was highly labor-intensive. This process became increasingly cumbersome over time as the verification workloads increased.

Over the years, SSA has worked to offer employers alternative methods to verify SSNs. One of those methods is the Employee Verification System (EVS). EVS is a free, convenient way for employers to verify employee SSNs. It provides employers with several options depending on the number of SSNs to be verified. For up to five SSNs, employers can call SSA's toll-free number for employers (1-800-772-6270) weekdays from 7:00 a.m. to 7:00 p.m. Eastern Standard Time. Employers may also use this number to get answers to any questions they may have about EVS or to request assistance. In Fiscal Year 2004, SSA responded to nearly 1.4 million calls.

Employers also have the option to submit a paper listing to the local Social Security office to verify up to 50 names and SSNs. In addition, employers may use a simple registration process to verify requests of more than 50 names and SSNs or

for any number of requests submitted on magnetic media. Currently, almost 17,000 employers have registered for this verification service.

To further increase the ease and convenience of verifying employee SSNs, SSA developed the Social Security Number Verification Service (SSNVS), which is an internet option that permits employer's to quickly verify the accuracy of employees' names and SSNs by matching the employee-provided information with SSA's records. SSA expanded this service to all employers in June 2005. We processed over 25.7 million verifications for over 12,000 employers in 2005.

On June 2, 2005 the Commissioner of Social Security announced the nationwide rollout of the Social Security Number Verification Service (SSNVS) at the SSA sponsored National Payroll Reporting Forum in Baltimore, Maryland. SSA has publicized SSNVS in various ways. An article on SSNVS was placed in the SSA/IRS Reporter that is sent to over 6.5 million employers. It was also featured in the SSA wage reporting email newsletter, *W2News*. We have also highlighted SSNVS in our many speaking engagements before the employer community. There is a special section on SSA's website for employers that highlights and explains the use of SSNVS.

In addition, employers may participate in the Basic Pilot program, an ongoing initiative in which SSA supports the Department of Homeland Security (DHS) in assisting employers confirming employment eligibility for newly hired employees. Participating employers register with DHS to use the DHS' automated system to verify an employee's SSN and work authorization status. The information the employer submits to DHS is sent to SSA to verify that the social security number and name submitted match information in SSA records. SSA will also confirm US citizenship, thereby confirming work authorization; DHS confirms current work authorization for all non-citizens. DHS will notify the employer of the employee's current work authorization status. This program is also available to all employers, subject to available resources.

In 2005, through the EVS, SSNVS, and Basic Pilot programs, we estimate we provided a total of 67 million employer verifications, up from 62 million in 2004.

The Wage Reporting Process

I would now like to discuss the process for reporting and crediting wages. Our role in the wage reporting process is to ensure that all workers receive credit for the work for which they and their employers paid Social Security taxes.

Employers report wages to SSA on Forms W-2 (Wage and Tax Statement). SSA processes the Form W-2 data for tax purposes for the Internal Revenue Service (IRS). Self-employed individuals report information on self-employment income to IRS on Schedule SE. IRS then sends this self-employment information to SSA. SSA uses the SSN to record employees' earnings.

Accurate earnings information is vitally important to our Agency's administration of the Social Security program because a worker's earnings record is the basis for computing retirement, survivors and disability benefits. If a worker's earnings are not properly recorded, he or she may not qualify for Social Security benefits or the benefit amount payable may be wrong.

Each year, SSA processes approximately 235 million W-2s from 6.6 million employers that are sent to the SSA either on electronic media or on paper. Almost 150 million wage earners work in jobs covered by Social Security, which means that many workers worked in more than one job during a year. While some employers continue to send us their reports on paper, we encourage electronic filing. We work with the employer community to educate them on the advantages of this method and expect its use to expand as technology improves. In fact, in FY 2005, 66 percent of W-2s were filed electronically, up from less than 10 percent in 1999. We believe the increase in electronic filing will reduce errors over time.

SSA also offers a suite of services called Business Services Online (BSO). BSO offers Internet services for businesses and employers who exchange information with Social Security. Available services for registered users include the ability to report W-2s via the internet.

As you know, SSA mails Social Security Statements to workers over age 25 each year (approximately 143 million in 2005). The Statement is a concise, easy-to-read personal record of the earnings on which the worker has paid Social Security taxes during his or her working years and a summary of the estimated benefits the individual and his/her family may receive as a result of those earnings. We encourage workers to review the Statement to ensure that the information in SSA's records is correct and to contact SSA to make any corrections necessary.

Later in life, when a person files for benefits, an SSA employee reviews the earnings record with the worker and assists the worker to establish any earnings that are not shown or are not correctly posted. However, since it may be difficult for the

worker to accurately recall past earnings or to obtain evidence of them, SSA strives to maintain accurate records at the time the wages are reported.

The Earnings Suspense File

The Earnings Suspense File, or simply suspense file, is an electronic holding file for wage items reported on Forms W-2s that cannot be matched to the earnings records of individual workers. A mismatch occurs when SSA cannot match the name and SSN on the W-2s submitted to information in SSA's records. If SSA later resolves the mismatch, we can remove the item from the suspense file and credit the wages to that person's record.

Since the beginning of the program in 1936 and through Tax Year (TY) 2003, the most recent year for which data is available, the suspense file contained about 255 million W-2s. While the suspense file represents an accounting of unassociated wage items, the taxes on these wages have been paid into to the trust funds. In TY 2003, \$7.2 billion in payroll taxes were credited to the Trust Funds based on wage items placed in the suspense file. This represented approximately 1.3 percent of total payroll taxes credited to the Trust Funds.

In order for wages to be credited to the correct worker, the worker's name and SSN on the W-2 must match the name and SSN recorded on the master record of SSNs assigned, the "Numident" file. As I discussed earlier, we receive about 235 million W-2 reports annually, representing reports from 6.6 million employers that total about \$4 trillion in reported wages.

Ten percent of the W-2s received by SSA have invalid name and SSN combinations when they first come to us. In our initial processing, the computer system uses more than twenty automated routines to identify commonly occurring errors that, when corrected, enable the W-2 to be properly posted.

A number of these processing routines address discrepancies between the name reported on the W-2 and the name on SSA records. For example, compound surnames which are hyphenated, such as "Mary Smith—Jones," sometimes cause a "no match." Others assume that the reported name is correct but that some mistake has been made with the SSN. The reported SSN is screened for a variety of prescribed common mistakes, such as transposing digits, in an effort to obtain a match.

For TY 2003, using computer routines we were able to post more than half of all W-2s received with invalid name/SSN combinations to the correct SSN. The balance, 4.1 percent of total W-2s received for TY 2003, was initially recorded in the suspense file. As of October, 2005, approximately 8.8 million W-2s (3.7 percent of the total) representing \$57.8 billion in wages remained in the suspense file for TY 2003.

Subsequent processing reduces this amount further. SSA removes wage items from the suspense file on an ongoing basis and posts them to the correct worker's record. Reinstatements can occur when a worker provides evidence of missing wages after reviewing the Security Statement. Over time, the percentage of W-2s for a given year or period of years that remain in the suspense file declines as a result of this subsequent processing. Historically, approximately 2 percent of all wage items for a given year remain in the suspense file.

Removing W-2 Items from the Suspense File

SSA is dedicated to reducing the suspense file's rate of growth as well as to reducing its current size. We want to make sure that individuals receive full credit for their earnings and the correct benefit amount when the time comes. As part of this effort, SSA employees carry out a number of activities in addition to our SSN verification services, which we have described earlier, to assure that the correct earnings are credited to correct individuals' records.

For example, SSA sends a letter, called the "No Match" letter, to employers who submitted a significant number of Forms W-2 that could not be matched to an individual's earnings record. The intent of these "No Match" letters is to improve the accuracy of wage reporting and the accuracy of Social Security benefits payable to eligible wage earners and their families. SSA also requests the employer to submit corrected W-2s so that future reports will be accurate.

In 2005, SSA sent 127,652 of these letters to employers who submitted wage reports containing a number of Form W-2s that SSA could not process.

SSA also notifies employees when we cannot process their W-2s due to mismatches and asks them to work with us to resolve the problem. In 2005, we sent 9.6 million such letters to employees, of which 1.5 million were sent to employers because we did not have addresses for the employee.

Beginning in April 2003, SSA implemented a new process that will electronically find millions of additional matches of W-2s in the suspense file and post those W-2s to the earnings records of the correct individuals. SSA's previous processes to

match the name and SSN used only the Numident. The new process also uses the worker's detailed earnings record, which includes employer information and the master beneficiary record for those who are receiving benefits, to credit the missing earnings to the correct worker. This new process also employs additional techniques with earnings record patterns to match the earnings to the correct individual.

As a result of this new process, we have removed more than 11 million W-2s from the suspense file and posted them to the correct earnings records. It is estimated that a total of 30 million items will be removed from the suspense file and credited to the records of individual workers through these new efforts.

Despite all these efforts, over time the suspense file continues to grow. SSA's Inspector General will testify later that this growth is due to "unauthorized work by non-citizens" and that stronger worksite enforcement is needed.

This growth points to the larger issue of the increase in illegal immigration and subsequent illegal employment. To address the security risks from illegal entry into the U.S. as well as current challenges concerning legal immigration, President Bush has called for a three part comprehensive reform of our immigration system to:

1. "Secure the border by catching those who enter illegally, and hardening the border to prevent illegal crossings."
2. "Strengthen enforcement of our immigration laws within our country."
3. "Create a temporary worker program that will take pressure off the border, bring workers from out of the shadows and reject amnesty."

Partnership With Other Agencies

As I mentioned earlier, our ability to improve our employer wage reporting process depends partially on our relationships with the DHS and the IRS. I want to highlight several efforts that we have undertaken with our federal partners to strengthen the integrity of the SSN and improve the wage reporting process.

For example, we are working with DHS, pursuant to the Intelligence Reform and Terrorism Prevention Act, on an interagency task force for the purpose of improving the security of Social Security cards and numbers. The task force will establish additional security requirements, including standards for safeguarding cards from counterfeiting, tampering, alteration, and theft; verifying documents submitted for the issuance of replacement cards; and increasing enforcement against the fraudulent use or issuance of Social Security numbers and cards.

The Enumeration-at-Entry process is a joint effort with DHS and the Department of State (DOS). DHS and DOS collect enumeration data as part of the immigration process and give it to SSA for use in enumerating aliens. This effort to strengthen the integrity of the SSN and improve government efficiency began in October 2002.

Our efforts to collaterally verify documents with the issuing agencies significantly improve the integrity of the SSN. SSA works closely with DHS to verify all immigration documents submitted in support of an application for an SSN and with DOS to verify the documents of refugees. We work with the Department of Justice to verify the documents of some individuals granted asylum.

As I mentioned earlier, we also support DHS in its ongoing initiative known as the Basic Pilot. The Basic Pilot is a voluntary tool used by participating employers to confirm the employment eligibility of newly hired employees.

As of February 14, 2006, DHS and SSA have signed agreements with over 5000 employers, representing about 22,500 employer sites. This represents more than a 50 percent increase since the expansion of the Basic Pilot to employers in all States. On the date of expansion (December 20, 2004), there were 2924 participating employers. In FY 2005, SSA handled over 980,000 Basic Pilot queries. The Basic Pilot allows an employer to confirm the validity of a SSN and whether a person is authorized to work on the front end of the relationship rather than after a W-2 has been filed.

In addition to these initiatives, SSA participates with DHS in an executive level steering committee to oversee and direct cooperative activities. This committee was formed in 2003. At its last meeting, the committee addressed a number of initiatives to strengthen the processes used to assign social security numbers.

These meetings have stimulated a high level of staff-to-staff contacts that occur informally nearly every day. Also, over the past year, the two agencies have engaged in a number of informal cooperative efforts such as workgroups to address specific requirements of joint interest, such as provisions of the Intelligence Reform and Terrorism Prevention Act and the Real ID Act.

We have also established an interagency effort with IRS and are working to resolve issues and cooperate on efforts that cross agency lines. We meet as necessary to address issues as they come up. Recent discussions have focused on developing automated systems to support the employer community in the reporting of wages and related matters.

Each year, SSA hosts the National Payroll Reporting Forum. IRS routinely participates in this training endeavor, which focuses on the latest changes for the upcoming tax season, how to file electronically, SSNVS, etc. Representatives from businesses, payroll providers, and other groups attend. The 2006 forum is scheduled for late May.

I would like to discuss the Agency's role in identifying and reporting fraudulent activities related to the Social Security program. The employees in our local offices are instructed to be alert for reports of fraudulent activities. When such activities come to their attention, they document the problem and refer the matter to the Agency's Inspector General. Staff in the local IG office investigate the matter further. They then present violations to the local U.S. Attorney, who decides whether to bring charges. To facilitate the process, the Agency has assigned staff attorneys from the Agency's Office of General Counsel to assist US Attorneys in prosecuting violations related to the Social Security Act.

Because of the interdependence of Federal governmental functions, it is critically important that Federal agencies work together to effectively combat identity theft. SSA currently cooperates with many agencies, including the Internal Revenue Service, the Departments of Justice, Homeland Security, State, Health and Human Services, Education, and Treasury, and the Federal Trade Commission. We share and verify information with these agencies, and we work together to improve the interfaces between our business processes. We are working with many agencies in an Interagency Identity Theft Working Group to broaden and strengthen the cooperation among Federal agencies. The Working Group is developing a summary of Federal agencies' activities to combat identity theft. It will facilitate sharing of best practices and expertise and will result in the development of new approaches to combat identity theft and solutions to common challenges.

Conclusion

I would like to conclude by emphasizing our commitment to strengthening our wage reporting processes to help ensure the accuracy of the earnings records that we maintain for all workers. We continue to explore ways to improve the accuracy of our earnings report records and to limit the growth of the suspense file. We believe our efforts help to ensure that we remain good stewards of the Trust Funds.

I want to thank you, Chairman McCrery, Chairman Ramstad, and members of both Subcommittees for inviting me here today. I look forward to working with you to continue to improve SSA's processes. I will be happy to answer any questions you might have.

Chairman MCCRERY. Thank you. Mr. Baker.

STATEMENT OF THE HONORABLE STEWART A. BAKER, ASSISTANT SECRETARY FOR POLICY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BAKER. Thank you, Chairman McCrery, Chairman Ramstad, Ranking Members Levin and Lewis. It is a pleasure to be here. I don't think I have testified here since the eighties, when I was a private lawyer talking about the then new U.S.-Canada Free Trade Agreements. It is great to be back. I would like to talk—begin by talking about the border, our Southwest border. I think we have all been shocked by the amount of violence that we have seen there recently. Assaults—this is not just a newspaper phenomenon—assaults on border patrol agents has doubled in the last year. The reason we think that that has happened is that as our border control efforts have gotten stronger, we have begun to interfere with the livelihoods of the people who make their living smuggling human beings across the border, and they are fighting back.

We can continue and we will continue to strengthen border controls, but that cannot ever be a complete solution to the problem of border incursions. The reason that those coyotes are making a

living smuggling people across the border is because once people get across the border, they can get a very good job in the United States, with a driver's license and a fake SSN. That is, in fact, what many people do.

Until we can address the problem that is drawing people across that border, we will always have difficulties at the border. We will always have people slipping across, and then we will always have people living in our cities and our countryside who are living outside the law, in the shadows, afraid to talk to law enforcement, afraid to talk to the authorities, afraid to complain when employers abuse them.

We shouldn't allow people to live in our country under those conditions. We need to move them into a temporary worker program where they can come out of the shadows, live in the light, have a temporary job in the United States, go home with a nest egg, and begin a life there.

They won't do that, however, until we can persuade people that it is not easy to get a job in the United States just by making up a SSN. That is why we are here today. We believe that false SSNs are a major part of the immigration fraud that enables people to work illegally in the United States, we are very eager to get access to information that SSA has about people whose names and birth dates do not match their SSNs.

The SSA identifies 8, 9 million people in that state every year. The SSA does an enormous amount of work to try to clear up those mismatches, because it is in the interest of the individual to clear that up so that they can actually get their benefits. Yet, a very small percentage of people actually clear that up, which suggests that for many of them it is not possible to clear it up because they have used a false SSN to get their job. We think that it could be as high as 90 or 95 percent of those mismatches are people who have made up their SSNs. That is based on our experience with the basic pilot initiative.

Chairman Ramstad asked are we satisfied with the amount of data sharing today, and while we have got very good cooperative relationships with the IRS and with SSA, we are not fully satisfied because current law, section 6103, makes it very difficult to share all of the information that we would like to have about the mismatches and other aspects of Social Security fraud that may also indicate immigration fraud.

The kinds of things that we could do with that information, according to the General Accounting Office, there are dozens of employers who have used the same SSN for a hundred employees or more. That suggests that this is not just employees who are part of the problem, but employers, some employers, of very limited number, but they should be at the top of our list for enforcement calls. We don't know who they are. We can't know who they are under the current interpretations of the law that SSA and IRS have, and until there is a cure to that, I think that we will not be able to target employers who are probably part of the problem. We will not be able to do a completely effective job of identifying people who may be engaged in immigration fraud who are working in chemical plants, where sabotage or even a mistake could kill thou-

sands of Americans, or working in the baggage handling area of airports; working in nuclear power plants.

Again, we would like to be able to target our enforcement in the places where the problems are to be able to identify people, employers, and workers who ought to be at the top of our list for enforcement. I recognize that there are legitimate privacy and revenue collection concerns at stake here, but we face unprecedented levels of immigration as well, illegal immigration. We have got to gain control of our borders or some day terrorists will use exactly the same kind of coyote service that economic migrants are using to get across that border. The only way to get control of that border is to get control of workplace hiring so that it is not as easy as it is today to get a job illegally. Having access to some of the information SSA has today would move us a long way down that road. Thank you very much.

[The prepared statement of Mr. Baker follows:]

**Statement of The Honorable Stewart A. Baker, Assistant Secretary for
Policy, U.S. Department of Homeland Security**

INTRODUCTION

Chairman McCreery, Chairman Ramstad, Ranking Members Levin and Lewis, and Members of the Subcommittees on Oversight and Social Security: I would like to thank you for the opportunity to appear before you today as you examine the current employment eligibility verification process, specifically the mismatching of Social Security Numbers (SSNs). I appreciate the Subcommittees' decision to devote attention to this issue because mismatching can be an indication of a significant problem, namely the use of fraudulent SSNs by unauthorized workers. If left unaddressed, this problem risks undermining the Administration's efforts to stop illegal immigration.

In my testimony, I would like to focus on one potential—and promising—way of dealing with this problem that the Subcommittees have already identified. I speak about improved cooperation between the Social Security Administration (SSA) and the Department of Homeland Security (DHS) to detect and prevent violations of immigration law.

BACKGROUND

As the Members of the Subcommittees know, the border with Mexico is an increasingly violent place. In part, that is because our efforts to restrict illegal crossings are beginning to work. Criminal gangs who traffic in drugs or human beings make their profits by illegal crossings, and as DHS border enforcement grows, it is not surprising that attacks on the Border Patrol have increased.

The best way to reduce the attacks—and the illegal trade in human beings—is to reduce the incentives to cross the border illegally in the first place. For one thing, that means relieving pressure on the border by creating a temporary work program that provides a legal channel for honest workers and employers to support their families and our economy without violating our laws. For another, it means reducing the ability of illegal immigrants to find easy employment in the United States. As Secretary Chertoff stated in his testimony before the Senate Judiciary Committee on October 18, 2005, a tough interior enforcement strategy is one of the three pillars of the President's strategy for comprehensive immigration reform, along with securing the border and creating a temporary worker program.

A vigorous enforcement of our worksite immigration laws is a crucial step in moving towards a system where foreign migrant workers are employed in this country legally and transparently. Currently, people who enter the United States illegally to find employment live in the shadows of our society, enjoying no legal protection in the workplace. The Temporary Worker Program, which the President proposed, will create instead a system where foreign workers necessary for our economy can work here legally and without fear. But both employers and employees will be slow to move toward such a transparent and open system unless they know that we are determined to enforce forcefully and faithfully our immigration laws in the workplace. For the Temporary Worker Program to be successful, we need to foster a culture of compliance with the law among both employers and workers, and we need to have the necessary tools to do so.

The DHS task of effectively enforcing laws that prohibit the employment of illegal immigrants depends on the Department's ability to obtain and use information indicating potential violations of immigration laws. I therefore encourage the Subcommittees to consider two questions: first, whether the information already collected by SSA suggests a significant problem with our existing enforcement of immigration laws; and, second, whether providing such information to DHS would improve such enforcement.

SSN MISMATCHING INDICATES WIDESPREAD EVASION OF IMMIGRATION LAWS

With respect to the first question, the answer seems quite clear. Studies conducted by both the SSA Inspector General and the Government Accountability Office (GAO) have documented that a significant percentage of the SSNs listed on earnings reports filed by employers (commonly known as Forms W-2) result in a "no-match" against the master system of SSNs kept by SSA. As the GAO report submitted on February 4, 2005 indicated, approximately 10 percent of the SSNs listed on earnings reports submitted by employers to SSA initially do not match SSA's records. Even after SSA applies a range of validation measures to reconcile the existing "no-matches," still about 4 percent of the earnings reports remain unattributed to valid SSNs. This number amounts to almost 9 million reports per year, representing \$57.8 billion in earnings for Tax Year 2003. These remaining unreconciled reports are then placed in the Earnings Suspense File (ESF).

SSA then employs additional measures to reconcile these earning reports. As a part of these efforts, SSA notifies employers with a significant number of mismatches, requesting that these employers correct the filed earning reports. SSA also sends similar "no-match" letters to employees, whose earning reports could not be processed because of the mismatch, asking them likewise to correct the error. The number of these "no-match" letters is considerable. The SSA's Inspector General indicated in his September 2002 testimony before the Subcommittee on Social Security that earlier that year SSA sent out about 800,000 of such letters to employers and some 7 million letters to employees. Testifying before the Subcommittee on Oversight in March 2004, Deputy Commissioner Lockhart indicated that the number of "no-match" notices sent the following year, in 2003, was targeted at larger employers: That year, SSA mailed out over 125,000 such notices to employers covering 9.5 million employees. In many instances, where SSA does not have a valid address for an employee, the employee-directed notice is sent to the employer.

These discrepancies are quite easy to correct. All an employer or an employee must do is inform SSA of the correct SSN to which the earnings should be attributed. If the earnings are legitimate, it is in the interests of the worker to ensure that the record is accurate, because a worker's future retirement and disability benefits depend upon SSA's record of his wages. If some of the worker's wages are not recorded, that may imperil his ability to get benefits in the future, or may limit the amount of those benefits.

Despite all of these incentives, the manifest reality is that very few employers or employees respond to the "no-match" letters. Some of this may be explained by confusion about what to do, resulting in employers simply not doing anything. Still, given the fact that simple errors can be corrected easily by both the employer and the employee, the extremely low return rate signals that an overwhelming percentage of the "no-match" instances cannot be explained by legitimate discrepancies and, as the GAO's February 2005 report indicated, suggests an attempt to obtain unauthorized employment through means of fraudulent SSNs.

There may, of course, be some innocent explanations for the discrepancies. For instance, a mismatch can result from a misspelling in the employee's name, from a change of name after marriage or for other reasons, from a failure to match correctly the record of an employee with a compound last name, or from confusion between the worker's last and first names. Notably, however, all of these mistakes are easy to correct, yet the stark reality is that, despite all incentives to do so, only a very small percentage of workers take the necessary action to rectify them.

A similar situation can be seen with respect to "no-matches" that result because the SSN listed on the earning report is composed solely of zeroes. Some of the SSNs that use all zeros result from instructions issued to employers who file their earning reports electronically to use all zeros in the SSN field when they do not have a number for their worker. Such a mismatch is, again, easy to correct. Yet, as I just discussed, very few employers or employees take the necessary action to do so.

The persistent failure of an overwhelming percentage of both employers and employees who receive the "no-match" letter from SSA to correct the reported error strongly suggests that an innocent explanation cannot account for all of the mismatches. The evidence indicates that there is likely an entrenched and wide-

spread practice of using fraudulent SSNs to evade compliance with immigration laws. As the SSA's Inspector General acknowledged in his September 2002 testimony before the Subcommittee on Social Security, illegal immigrants account for a significant portion of items in the ESF. The GAO report, completed in February of last year, suggests that the problem has only increased in magnitude in the subsequent years.

USE OF SSA'S "NO-MATCH" DATA IN THE ENFORCEMENT OF IMMIGRATION LAWS

DHS sees a clear benefit to receiving portions of the "no-match" data from SSA in assisting with the Department's mission to enforce immigration laws at the workplace. As I already stated, the SSA is using a variety of innovative and sophisticated methods to identify the SSNs to which the unreconciled earning reports should be attributed before sending out the "no-match" letters with respect to the remaining reports. The database of "no-match" letters, therefore, is already targeted to those unattributed earning reports that cannot be explained by, say, a simple misspelling in the employee's name or a typographical error in his SSN. These true "no-match" letters could aid an U.S. Immigration and Customs Enforcement investigation of an employer violating immigration laws. However, due to statutory restrictions, DHS is currently not permitted access to the "no-match" data.

The GAO report reveals precisely the kind of data that, if made available to DHS, would trigger instant attention from our immigration enforcers. For example, GAO cited many examples where employers used the same SSN for as many as 10 different workers in the same tax year, and did so as many as 308 times over a 16-year period studied. Astonishingly, GAO discovered over a hundred occurrences where employers used the same SSN for more than a 100 earnings reports, and even an instance where the same employer used one SSN for 2,580 different earnings reports in a single tax year. Obtaining information about potential immigration violators will allow the immigration components of DHS to target its enforcement efforts at such employers—those with the worst record of submitting compliant SSNs for their employees.

Here, I would direct the Subcommittees' attention to the GAO finding that, during the period from 1985 to 2000, a relatively small percentage of employers—only about 0.2 percent—were responsible for over 30 percent of the total number of ESF reports. Moreover, the types of employers most frequently associated with incorrect earnings reports belonged to industry groups historically known to employ illegal immigrants, such as agriculture, food and beverage industry, and construction and other trade services. The SSA Inspector General has similarly found that employers in these industries are most likely to file earning reports with incorrect information. Given this correlation, some portions of the "no-match" data would assist the Department with its enforcement energies.

On the basis of the "no-match" letters, the Department could easily identify those employers that have either a large or a disproportionate number of employees without a matching SSN. The Department could then concentrate its efforts on these employers, asking them to indicate whether their employees have corrected the inaccurate records, or to explain what steps the employers have taken to clear up the "no-match" reports, or to provide some other satisfactory explanation for the discrepancies.

We are aware that the vast majority of employers do wish to comply with the rules, and we are committed to working with those employers to clarify their responsibilities to attempt to resolve "no-match" letters. Working together would help to ensure that all employers take necessary action to correct circumstances that would lead a reasonable person to believe that the worker is undocumented, and would further eliminate the ability of illegal immigrants to obtain employment.

Eliminating the use of phony numbers will go a long way toward preventing more common immigration violations. But immigration violators will look for other ways to beat the system. Instead of phony names or numbers, they will use real ones. Adults may use the numbers of infants, or a group of workers may share a single valid name and number. These frauds, too, can be discouraged by a careful review of SSA data, but not by a single-minded focus on "no-match" letters. That is why DHS would like to further establish a good data-sharing relationship with SSA, not a single-shot approach that deals only with today's most obvious problem.

I want to stress that all of the parties here today, including DHS, are committed to preserving the privacy of sensitive data. The information DHS seeks is the identities and contact information of employers and employees whose behavior requires further examination. We understand that this is sensitive data, and we will ensure the appropriate privacy protections are in place to protect U.S. citizens from potential abuse.

I also want to acknowledge that the current prohibition on sharing of the information collected from earning statements reflects a legitimate concern about the need to ensure effective tax collection. This is an important interest, and it should, of course, be carefully considered as we think about the ways to enhance data-sharing between SSA and DHS. But we also need to consider carefully the significant interest that we have in ensuring effective enforcement of our worksite immigration laws and fostering a culture of compliance among both employers and employees.

CONCLUSION

I thank Members of the Subcommittees for the opportunity to address them today on this important issue, and I stand ready to answer any questions.

Chairman MCCRERY. Mr. Baker, this may not be in our Committee's jurisdiction, but has your Department proposed any specific language to change section 6103 of the Internal Revenue Code, which would allow greater sharing of information?

Mr. BAKER. There is no formal proposal today as I speak, but we are certainly working with the rest of the Administration on ideas about how to solve that problem.

Chairman MCCRERY. Should we expect some offering from the Administration relatively soon with respect to this problem?

Mr. BAKER. I certainly hope so.

Chairman MCCRERY. Is there disagreement among the agencies in the executive branch about how to solve this sharing problem?

Mr. BAKER. I think we all recognize the importance of the immigration problem and the value that this information could provide. We also recognize that there are privacy and revenue consequences to making this decision, so it has been a very collegial discussion thus far.

Chairman MCCRERY. Good.

Mr. EVERSON. Could I comment on that, sir?

Chairman MCCRERY. Sure.

Mr. EVERSON. I agree exactly with Secretary Baker's characterization of the discussions that have been held. I just do want to emphasize that in terms of tax administration, I view this as an important discussion, because of the fact that we have made progress in having people who are in the country illegally and working illegally pay their taxes. That is my principal concern as a tax administrator.

There is, on the other hand, a very important concern, which was very eloquently laid out by the Secretary, about having a legal system of immigration. I don't understate, though, the impact of this on tax administration, should we share the information. It is a very important policy choice that is how I would phrase it.

Chairman MCCRERY. In other words, you are saying that were we to loosen the current rules with regard to sharing information, lest we do it very carefully, it could result in lower compliance from a tax standpoint? Is that what you are saying?

Mr. EVERSON. I think that I would be even a little sharper on that—

Chairman MCCRERY. It may be.

Mr. EVERSON. —to say that right now, as an example, we process 2 million returns a year in our volunteer sites around the country. These are community-based organizations largely working with immigrant groups. There will certainly be a chilling effect on par-

ticipation in the tax system if those volunteers say, "Look, this information will now be transmitted to Homeland." I am not saying don't do that. Please get me right on this. I am just saying if we do this, we all have to do it together with our eyes wide open.

Chairman MCCRERY. That is why I asked the question about whether all the agencies are cooperating on this, and if there was squabbling among the agencies and the executive branch about how to solve this. I probably should have put it more positively like you did and said you should all work together to make sure that we go in with our eyes wide open and try to avert any unforeseen or unintended consequences, I should say, of our changes. Mr. Baker, you speak with some enthusiasm about getting to this problem and solving this problem. Yet, worksite enforcement arrests by DHS have declined, as well as notices of intent to fine employers. Do you have reasons for this and will your enthusiasm perhaps spread to the rest of the Agency to correct this decline?

Mr. BAKER. I hope so. I am new to the area and maybe that is why I speak with such enthusiasm. Yes, there is no doubt that there have been difficulties mounting effective worksite enforcement programs. In many cases, that is because of the low fines and the very substantial administrative law judge procedures that have been necessary to follow and difficulty actually collecting the fines once they have been imposed. Even people who have a pattern and practice of violation, the people who are the worst violators, I think the fine is \$10,000. It is a cost of doing business for the worst employers.

We do have to have a coherent, comprehensive approach to worksite enforcement that addresses those issues as well, but as we have begun to work on border enforcement, we have seen time and again that we have got to do interior enforcement at the same time and also have a temporary worker program for the people who will be displaced by our enforcement efforts.

Chairman MCCRERY. On another matter that could help you do your job, some time ago, Congress required SSA to provide what was then some other agency, but is now under the DHS, a data file called the Non-Work Alien File. The DHS basically says this file is so messed up it is unusable. We can't use it. It is not good data. What did DHS do to reach that conclusion, and why do you think you cannot use the information for immigration enforcement purposes?

Mr. BAKER. I am not prepared to say we can't use it, but there were a number of challenges there. We can start with the fact that SSA, of course, has an SSN. The DHS ordinarily does not have a SSN in its records, because most of the time when we encounter an alien, even if we are going to be authorizing him to work, he may not have an SSN. Our files are not matched up. When we get the information from SSA, our experience is about half of the people we can't tell who they are. We can't match our records and theirs.

In addition, SSA data, when it comes to us is pretty far out of date. It is about a year, a year and half out of date. It is not their fault, because they get the information late, but that means that people have moved on. That makes it difficult to find people.

Plus in that year and a half or perhaps even earlier, a number of people who originally get a non-work SSN, they are here. They may marry a U.S. citizen. They become authorized to work by virtue of a change in their status. We find that about 40 percent of the people on that list actually are legally entitled to work. They just are using an old SSN.

That made it—meant the data was not great for doing enforcement. There were other problems. We don't have any mainframes at DHS, but SSA works off big mainframe computers with big tapes and they—for years they sent over what they had, which was their tape, and we didn't what to do with it.

A lot of these problems have begun to recede. We are getting the information on a disk in Excel spreadsheet form, which we can manipulate, and we are expecting a new batch of data in the next couple of weeks.

Our analysis of the most recent Excel spreadsheet data that we got is that there are things that we can do with it. Even though not everybody on there is unauthorized to work, the fact is that probably 60 percent of them are not authorized and yet they are making contributions.

So, we have begun to do analysis of well who are the employers who have the largest number of non-work aliens working for them. Many of them will be authorized, but many of them will not be. So you begin to wonder whether some of these employers ought to be the first to get the visit from DHS.

When we get the new data in a week or two, we hope to do a more sophisticated analysis of that information and begin to use it in prioritizing our investigations.

Chairman MCCRERY. Thank you. Perhaps when you forward to the legislative branch your recommendations for changes in the law to facilitate sharing of information, you could also tell us whether this particular exercise is still worth it, and if it's not, we will junk it. If so, perhaps you can explain how we might make it better between the two Agencies—SSA and DHS?

Mr. BAKER. We will gladly do that.

Chairman MCCRERY. Mr. Levin?

Mr. LEVIN. Thank you. Thank you, Mr. Chairman. Let me follow up with your salient questions. First ask you, Mr. Baker, you mentioned some of the problems with the present laws and regulations relating to employer responsibilities. Has DHS or its predecessors suggested amendments to the laws that would make it easier to enforce employer obligations?

Mr. BAKER. This is part of the review that we are going through right now. As you know, there is legislation that has passed the—some legislation on immigration reform has passed the House, and there is a companion bill in the Senate being marked I think in early March. We are as an Administration looking for a way to engage in that process so that we can make suggestions for ways to improve worksite enforcement. That is an ongoing discussion inside the Administration, which I hope will result in action fairly soon.

Mr. LEVIN. You favor tightening the requirements in the enforceability of the employer obligations?

Mr. BAKER. I certainly believe that if we do not deal with the fact that it is so easy to get a job in the United States, with a min-

imum of fake documents that can be purchased for \$50 bucks out in Adams Morgan today, that if we don't solve that problem, we won't solve the border problem.

Mr. LEVIN. I understand that.

Mr. BAKER. We won't solve the illegals.

Mr. LEVIN. Your position is there should be a tightening of the requirements of the employer?

Mr. BAKER. I think the employer will have to take more responsibility for making sure that his employees are actually authorized to work in the United States, and we need to find a way to give employers tools to do that.

Mr. LEVIN. When you say tools, right now you think the main problem is that when employers hire people who are not legally here, that it is the lack of tools that leads them to hiring these people?

Mr. BAKER. I think, in fact, that is in many cases.

Mr. LEVIN. You think that is the main problem?

Mr. BAKER. Yes. In many cases, employers are—have no interest in hiring illegal employees. They have a set of procedures that they follow that are required by current law, but which are not adequate to actually screen out illegal immigrants. I have had businesses complain about the large number of identification documents that they are required to accept as proof of identity.

In some cases, employers have said you have made it too easy for people to engage in fraud.

Mr. LEVIN. All right. It will be interesting to pursue that. Let me—you talk about the data being a year, 2 years old. The data that you are suggesting be obtained from SSA and IRS would remain that old, would it not?

Mr. BAKER. It would. It would always be at least a year out of date.

Mr. LEVIN. When you say the reason you haven't used the data you now have is because it is too old. What does that mean for your request or your suggestion that you receive more old data?

Mr. BAKER. Well, that was one of five significant problems. I left out one. One of the other problems was that I think the data included everybody who had ever worked since this program began in the seventies, even if they hadn't worked in 20 years. What we are interested, of course, in receiving is data about people who were working last year. It will not be perfect, because of the lag, but we still believe that we can use it to find information that will allow us to prioritize our enforcement efforts.

Mr. LEVIN. I think my time has expired. Let me just mention—you mentioned about the differences among the agencies and the Commissioner, IRS Commissioner, responded. I think you would agree that there are some competing, at least if not competing, different considerations here.

Mr. EVERSON. Absolutely.

Mr. LEVIN. I don't think we should characterize this discussion of competing interests or needs as kind of—I don't think any of us want to minimize them or suggest that it is not important for you to have a full-scale intelligent discussion of how you mesh competing interests, competing needs; that the potential problem of there being less information received by IRS if you were to dispose

more information to other agencies, not that that is the answer, but I think we need to be careful to not be—not to—to minimize the importance of this kind of a intelligent interagency discussion, which I hope you will share with us at some point, when it is appropriate. Thank you.

Chairman MCCRERY: No, it is an excellent point, Mr. Levin. Chairman Ramstad.

Chairman RAMSTAD. Thank you, Mr. Chairman. Commissioner Everson, I just want to clarify a point. I know the IRS has the authority to impose penalties on employers who fail to file the correct wage information of their employees. Hasn't the IRS been imposing penalties and collecting money from employers who repeatedly submit mismatched W-2s?

Mr. EVERSON. Not in any meaningful sense I would say, sir. What really happens here is that those penalties are very hard to sustain. It is not unlike what Secretary Baker was just talking about in terms of the hurdles you have to go through. The basic dilemma here is that the employer has to have accurate records, but it is the employee who is on the hook for providing the accurate information to the employer. If the employer has made a reasonable effort, then those penalties are going to be abated.

The second point I would make here involves looking at what we are trying to address, and you are, the \$345 billion a year. In the employment tax area, that is about \$60 billion a year. We have something like 2,500 frontline auditors and collection officers who work on that piece of our business. This is also, I would say, not a very profitable corner of our world—to chase after those penalties.

That having been said, the final thing I would say is that we have launched a study of some 300 employers who have a particularly egregious record here. Three-quarters of their employees seem to have mismatches, and we have a number of audits going on them on employment taxes generally. If there are reasons to impose some of these penalties, we will certainly do so. I don't want to mislead you to say that it would make sense from a tax administration point of view to suddenly ramp this up just to help Secretary Baker.

Chairman RAMSTAD. Well, just to follow up on Secretary Baker's point made during his testimony. As I understand it, if that scenario unfolded of an employer hiring a hundred employees on the same day and all hundred employees submit signed W-4s using the same SSN, it seems to me it would be obvious to any employer that he or she was receiving inaccurate information. As I understand the situation, under IRS regulations, the employer could not be held responsible for submitting inaccurate information to the IRS? Is that correct? Shouldn't the IRS have the ability to penalize employers for this kind of conduct?

Mr. EVERSON. I think we have the ability, sir. It is a question of what procedures they took and then what the employees would have presented to them. I think that example is obviously a rather extreme instance, which why we have concluded the study that we are working on—to see what we can do in these most extreme cases. We are following up on that basket of the 300. I think it is with 297 that we have seen that kind of a conduct.

I am hopeful that we will sustain some penalties in that area. Again, I don't think that is—I don't—I would agree with Secretary Baker's characterization of this. That is at the fringe. That is not going to change the immigration problem in terms of interior enforcement.

What he seeks to do, which I understand the benefit of and think is important, is to have a system potentially that would check everybody and then not to follow—if that fellow is trying to break the law, the status, or the behavior that you are talking about, that is one thing. The vast bulk of this is people who have been duped by false documents let us say.

Chairman RAMSTAD. Well, so pursuant to that study, it is conceivable that you would recommend changing the IRS regulations so it could take action against employers who knowingly submit false information?

Mr. EVERSON. Yes, sir. I think it would—

Chairman RAMSTAD. You and or SSA?

Mr. EVERSON. We have been encouraged to do that. This is a tricky area, again, because this is reasonable cause area, but I think we will learn something very real from the work we are doing.

Chairman RAMSTAD. When do you expect the results of that and when can we learn about them?

Mr. EVERSON. Assuming you don't do another hearing on this for a year, I think we will know quite a bit by then. I don't know where we are on each and every one of those audits.

Chairman RAMSTAD. My time has expired. Let me just make a comment: I understand the tax gap, and I think you are doing an excellent job overall, Commissioner. I understand the tax gap, but I also understand the billions and billions of dollars that the American people are spending that we are appropriating for DHS and border patrol, and I think closer cooperation, and more stringent enforcement are appropriate.

Yes, we might risk losing millions of dollars of tax revenues, but when you look at the number one function of the Federal Government, to keep people safe and now to keep people safe from terrorists, it doesn't take a genius to figure out how to get into this country illegally and do us harm. God knows how many al Qaeda sleeper cells are amongst us. We don't know, nor does the CIA or the FBI.

I would just like to make that point. I am sure you don't disagree and I am sure no Member of this panel disagrees.

Mr. EVERSON. Yes, sir, if I—could I respond?

Chairman RAMSTAD. Please.

Mr. EVERSON. I agree with that entirely. I would also note that the kind of discussion we are having today about the routine sharing of information for this purpose, important as that policy objective would be, does not run to the issue of terrorism. It is my understanding that in the context of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (U.S.A. Patriot) Act of 2001 (P.L. 107-56), there was discussion about having more sharing of taxpayer information for anti-terrorism purposes, and that proposal was knocked down.

I would ask that we consider revisiting that issue. If we are going to open up this issue for immigration purposes, I would hope that we would look at 6103 for the potentially more devastating terrorism issue. I would be surprised if Secretary Baker is adverse to that.

Mr. BAKER. I would be delighted.

Chairman RAMSTAD. Well, again, Commissioner, I think you make a very good point in conclusion and thank you again for the job you are doing. I appreciate your responses.

Chairman MCCRERY. Mr. Lewis.

Mr. LEWIS OF GEORGIA. Thank you very much, Mr. Chairman. Mr. Commissioner, there is a view in certain quarters, maybe in Washington, maybe in some other places, that you and the IRS have all of this information, just plenty of information on unauthorized workers and that you are not sharing this information with DHS. Is it your role to locate and identify illegal or unauthorized workers and turn them into the DHS or immigration officials?

Mr. EVERSON. No, sir, and I think that is the nub of this issue. We run an independent database, and 6103 provides very strict standards as to what can be shared. It does not allow routine information to be shared at this stage through SSA over to DHS. There is a written testimony that indicates last year we issued approximately a million six I-10s. An I-10 is a tracking number that we use for someone to file tax returns.

It used to be, the last time I was here, that we had a bigger problem with aliens not filing because of concerns over identity creation documents. Now, we have a better handle on that. These documents are being used for tax returns, but an alien is encouraged through VITA site or elsewhere to come in and file a tax return, and they are confident that their information is not going across town to Homeland.

Mr. LEWIS OF GEORGIA. Thank you very much, Mr. Commissioner.

Secretary Baker could tell the Members of the Committee how do you reach a happy medium and not violate privacy when you are asking DHS or asking IRS for information? I would like for you to just elaborate. What are your feelings about people's SSN the IRS information being put in a super, super agency made available to DHS? I know we need to protect our country, but it isn't something about violating the civil liberties, the civil rights of people?

Mr. BAKER. I would be glad to address that. I completely agree with you that privacy is part of our country's most important values, and we need to protect that. The kinds of information that we are asking for here, in this context, is not tax return information, the kinds of information that people are most concerned about the privacy of. This is information, by and large, that says this person with this SSN works for this employer, and that is really, in most cases, the extent of the information that we are trying to get. That is private tax information because it has been reported on a tax form to the government, but there is nothing inherently related to income tax about that information.

While it is necessary, I think after 6103 was passed, to engage in a privacy discussion about any such information, we are trying

in our discussion of this to avoid intruding into the most private aspects of people's tax returns.

Mr. LEWIS OF GEORGIA. Mr. Commissioner, as the former INS Deputy Administrator, what are your views on?

Mr. EVERSON. I have to be careful here, sir, because I have a current position in this Administration, but I do have some experience in this area. These are two very important national interests. I say frequently in speeches that we can't allow our tax system to become broken the way our immigration laws and our drug laws are where they are viewed as optional for people. I couldn't agree more with the Secretary and with the President, who has said we have to fix our immigration system.

If we do this, as this President and the Secretary have said, we have to go forward with a very strong program which gives people a legal vehicle to be here, but, on the other hand, has a very strong interior enforcement program to make sure if they're not here legally, they don't remain. I implemented the '86 act—that was my job in the Reagan days. If we fail to do that, and the '86 act didn't have the teeth in it to do that, we really won't have helped Secretary Baker, and we will make my job or my successor's job worse. If we are going to go forward on this, we have to go all the way and do it right with a liberal, if you will, employment program, but a strict enforcement program on the interior.

Mr. LEWIS OF GEORGIA. Thank you very much. Thank you, Mr. Chairman.

Chairman MCCRERY. Mr. Johnson.

Mr. JOHNSON OF TEXAS. Thank you, Mr. Chairman. Let me ask the SSA guy one question. Have y'all stopped giving away cards on phone calls?

Mr. LOCKHART. We don't give cards away on phone calls. To get a new card, you have to come into the office and present identification information and birth certificates or other evidence.

Mr. JOHNSON OF TEXAS. Do you know of people getting more than one?

Mr. LOCKHART. People can get replacement cards, if you mean that. They can come in, but the law was changed last year, and we are following the new rules.

Mr. JOHNSON OF TEXAS. No, I just wondered if you all were enforcing the law?

Mr. LOCKHART. We are enforcing the law, and we are tracking to make sure that no one gets more than 3 a year and 10 in a lifetime.

Mr. JOHNSON OF TEXAS. Okay. Thank you very much. Mr. Baker, I don't agree with you on anything you said. I would like to know when you are going to stop the Catch and Release program, because that is part of the problem on the border; and, furthermore, how do you differentiate between other than Hispanic and Hispanics that come across.

Mr. BAKER. I certainly agree with you that the Catch and Release program—

Mr. JOHNSON OF TEXAS. When are you going to stop it?

Mr. BAKER. We are—the Secretary has said that we are trying to stop it by the end of this fiscal year, which is in October. The difficulty with the Catch and Release program—it is not a program.

Catch and Release arises with non-Mexican illegal crossers of the border, whom we cannot simply return across the border, as we do with Mexicans. We have to put them in detention while we wait for them to have their identity and nationality established, and then send them back to their home country. That takes a long time, and it fills up an enormous number of the detention beds that we have.

The difficulty, the way Catch and Release began was we ran out of beds. We just didn't have any space for people. We had to release them. What we are trying to do now is to make sure we have enough beds, enough space, to put everyone who crosses that border, who is not a Mexican, in detention and send them home.

We are doing that today with Guatemalans, Hondurans, Nicaraguans—most of the large numbers of immigrants who come across that border illegally and who have begun to do it in large numbers. There is still the biggest part of the season for crossing that border is still to come, and it is going to be a question whether we can continue to have the space to put all of them and get them back to their home countries quickly enough.

Mr. JOHNSON OF TEXAS. Well, you keep talking about other than Mexican. Are you deporting the Mexicans?

Mr. BAKER. Yes, the Mexicans are taken back across the border. When they are captured, they don't have to be detained. They can be taken right back to the border.

Mr. JOHNSON OF TEXAS. What kind of law change do you need to do the same with the others?

Mr. BAKER. The biggest problem we are facing today, the largest numbers that we have not been able to get a handle on are Salvadoran immigrants. The reason is that they cannot be subject to expedited removal in the same way that other nationalities can because of a lawsuit that was filed in the eighties—the last time I was here before this Committee that lawsuit was pending. We have an injunction against us, along with several other injunctions that are that old that make it very difficult to move them quickly through the process.

Mr. JOHNSON OF TEXAS. Well, if you don't have room for them, do you let them get out and go to work? Do you give them a green card?

Mr. BAKER. We have no choice but to let them go and in general if they are—we essentially give them a court date and say please show up for your court date.

Mr. JOHNSON OF TEXAS. Yes, sure, and they don't come.

Mr. BAKER. I entirely agree with you. This is not the right way to run a system, but we do not always have the space for them. We have asked for Congress to take a look at the injunction process that affects immigration law so that some of these immigration laws that are older than my kids can be taken off the—the injunction can be taken off—

Mr. JOHNSON OF TEXAS. Okay. Well, I hope y'all will get with it faster. Let me ask the IRS one question. According to the Center for Immigration Studies, in 2004 you only—only three employers were fined for hiring illegals—only three. I think that is kind of unacceptable. Do you know—are y'all trying to rectify that problem? I know you have discussed it a little bit already.

Mr. EVERSON. Well, sir, I think that we want to do more here, but again there is this conundrum where the employer has to have accurate documents, but the burden is on the employee, provide the documents to the employer, not vice versa, so you have a reasonable cause exception here. We are looking at whether we can tighten it up. These 300 audits or investigations that we are doing will help us see this. The real answer here, again, is not to have us enforce the immigration laws since we are trying to go after the tax gap and all those other things, but we are going to do what we can.

Mr. JOHNSON OF TEXAS. Thank you, sir. Thank you, Mr. Chairman.

Chairman MCCRERY. Thank you, Mr. Johnson. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. Thank you to the witnesses. Let me follow up on Mr. Johnson's questions, because I think that is very important. Commissioner, is the IRS capable of trying to detect employers who are violating our immigration laws or those individual employees who may be violating immigration laws without having to search for SSA records as well as INS or immigration records?

Mr. EVERSON. Not to any meaningful extent, sir, given the press of the tax gap and the other compliance areas. As I indicated, I can't recall if you were in the room, we have about 2,500 frontline people who work on employment taxes. That is out of our frontline enforcement personnel of about 20,000, and they have to take care of all employment tax issues where you are my employee, which from our point of view, is the substantially more important issue. I have come on hard times in my small business, so I am taking your Social Security out, but I am not sending it over to Jim. That is a problem.

Mr. BECERRA. Let me ask you this: Is it still the case that some \$300 to \$350 billion of taxes that are owed go unpaid?

Mr. EVERSON. Yes, sir. We just updated our study on the tax gap and refined it from last year, relating to the year 2001, and the gross tax gap is about \$345 billion.

Mr. BECERRA. Most of it has nothing to do whether there is an undocumented immigrant working in this country paying or not paying taxes.

Mr. EVERSON. That is correct. We have a very high compliance rate in this country. It is about 83 and half percent, but the amount of money that we could bring in by improving that is significant.

Mr. BECERRA. What happens if all of a sudden we announce that the Federal Government is going to allow IRS to share information with DHS for immigration purposes to try to track down undocumented immigrants? Do you think those undocumented immigrants who are here without documents to work but are working and actually are filing tax returns, do you think they are going to file tax returns?

Mr. EVERSON. Well, this is the basic concern that I have outlined and the situation that as we have these discussions that are referenced that I think we all need to consider. Because right now, increasingly, people who are here working illegally feel comfortable participating in the tax system.

Mr. BECERRA. We have less compliance, chances are, if we found that all of a sudden IRS is complying with DHS on sharing information about people's tax filing?

Mr. EVERSON. I agree with that in the short term. However, if Secretary Baker is able to really fix this problem and the people in the country are here legally, over the long term, we will get it right. Where we can't go is not fix that situation and hurt tax administration.

Mr. BECERRA. Well, let's turn to Secretary Baker. Before I leave you, Mr. Commissioner, I want to thank you for your quick action recently on this Refund Freeze program that you have. Once the taxpayer advocate indicated that there were some real problems in the way some low-income individuals were having their legitimate refunds suspended for over a period of 8 months to more than a year in some cases.

I want to thank you for the action you have taken to make sure that folks who exist on \$13,000 a year are able to get their refund that they legitimately earned. I want to thank you for that.

Mr. EVERSON. Yes, sir. Thank you.

Mr. BECERRA. Will we have now notice go out for this filing period coming up?

Mr. EVERSON. Yes, the notices will go out. We are putting that in place this filing season.

Mr. BECERRA. How about all those folks who still haven't received their refunds who legitimately earned them who are still waiting?

Mr. EVERSON. We are going to have to work through the old inventory probably after we get out of this filing season. We will do that as quickly as we possibly can.

Mr. BECERRA. Can we chat about that, because there are a whole bunch of folks who are existing on meager incomes who are still waiting.

Mr. EVERSON. We are going to do it as quickly as we can, sir.

Mr. BECERRA. Thank you. Mr. Secretary, let me ask you a couple of questions, and also I think Mr. Johnson touched on this. We have a number of folks that we have acted on to deport from this country because they don't have the permission to be here, and that is the way we should handle it. We have a whole bunch of folks who are employing these individuals and creating this tremendous magnet for people from across the world to come into this country to work, because even if they are working at substandard wages here in this country, they are still making more than they could have ever hoped to have made in their home country.

If we are not prosecuting folks who are hiring folks who don't have the right to work in this country, and if we allow people to make the excuse that they reasonably relied on documents of someone who is a clear immigrant to work in this country, how will we ever solve the problem of legitimately allowing only those entitled to work in this country to do so?

Mr. BAKER. I think you make a good point. There is no doubt the vast majority of people who have employed illegal immigrants don't know it, obeyed the law, and were the victims of someone who gave them false documents. I think there are also people whose business model is violating the immigration law. We need tools to

go after them, whether it is criminal law or higher fines, and ability to attack pattern or practice, we do need authority to do that.

Mr. BECERRA. Would you agree with the Commissioner that if we give you better tools, you can do a better job than if you necessarily went out and started getting information from the IRS to try to help you track down that information through some indirect way?

Mr. BAKER. We do need the information. There is no doubt about that. We have not asked for tax return information, so we are not asking for the kind of information that would directly impinge on people's willingness to file tax returns. There is no doubt, as Mr. Johnson suggests, we would also need the ability to put people in detention while we are trying to get them out of the country.

Mr. BECERRA. Absolutely. Absolutely. Thank you very much. Thanks, Mr. Chairman.

Chairman MCCRERY. Yes, sir. Mr. Hayworth.

Mr. HAYWORTH. Mr. Chairman, thank you for holding this joint hearing. My gratitude is exceeded only by my disappointment and that is putting it mildly for the ample display of what can only be described as a schizophrenic policy concerning our borders and the presence of illegal aliens, not undocumented workers—that is Orwellian newspeak—workers who have documents galore coming in to our system.

What distresses me most is the complete and utter lack of urgency inherent in all the remarks and testimony we have received this morning. Secretary Baker, please pass along to Secretary Chertoff, who I am sure is here testifying in other areas this morning, my genuine concern that the evaluation he proffered in Houston in November when he said it was his goal to gain operational control of our borders in 5 years time. For a Nation at war, that is wholly unacceptable.

Commissioner Everson, thank you for coming, sir, and I realize you have worn both hats at different times in history. To suggest on one hand that we can have strict enforcement at the same time liberal employment, which it is not my intent to put words in your mouth, sir, but I take as well, basically, the status quo. Let us continue to let businesses gainfully employ illegals or perhaps more accurately in terms of keeping with the stated policy of the Administration create a new type of program that the intent may not be amnesty, but that is really what it is.

Mr. EVERSON. If I could, sir, I want to clarify this.

Mr. HAYWORTH. Please do.

Mr. EVERSON. I am saying if you clearly clamp down on the illegal, you will want to expand legal. That is all I am saying.

Mr. HAYWORTH. Okay. Well, I thank you. Reclaiming my time, let me also get you to clarify granted the fact that revenue is the middle name of the organization that you so ably represent, Commissioner, if you had the opportunity to have bank robbers file returns and gain that revenue, do you think that would be helpful for paying the Nation's bills? Would you suggest that as a policy action? If we could get the identity of bank robbers and other thieves in our society and get the revenue, a portion of that revenue that they have attained through ill-gotten gains, would that be helpful to solve the revenue challenges we confront?

Mr. EVERSON. Well, sir, we obviously pursue illegal source income, and it is an important part of criminal prosecution. Again, as I stated at the top of the hour, we want our share, our tax share, whether the income was earned legally or illegally.

Mr. HAYWORTH. Yes, again—but again, I want to understand this. Revenue is the final notion. However you can get your hands on it, however it is earned, the bottom line with your organization is getting that revenue?

Mr. EVERSON. That is correct, sir.

Mr. HAYWORTH. It would follow that if there are criminal enterprises, we want that revenue as well, and if we just have to look the other way on the criminal enterprise at hand to gain the revenue, well, so be it.

Mr. EVERSON. No. That is not what we are doing. I don't agree with that at all. That is a mischaracterization.

Mr. HAYWORTH. Good. Mr. Commissioner, please, please. Reclaiming my time, I offer the mischaracterization purposefully, Mr. Chairman, and with your indulgence, because it points out the inherent schizophrenia of the policy the Administration and quite frankly many on the right and left—on the right for cheap labor, on the left for cheap votes—are trying to create for a Nation at war.

It is inherently disappointing and inherently dangerous, and it is the wrong path at the wrong reasons for the wrong times. I have heard from all three of you gentlemen words to the effect that we have to bring people out of the shadows.

I believe, gentlemen, we will be far better off shining the lights on employers and employees alike, enforcing existing laws, beefing those laws up where we need to, and I will just tell you I appreciate the spirit in which you come, but whether it is 5 year's time to get control of the border or a year's time to come back with an incisive report, gentlemen, the legislative branch can only do so much. The executive branch exists, of course, to administer and execute the laws.

We may have imperfection in laws. There is testimony that exists today in some ways that we can help streamline and improve it, but please understand, and convey to all of your cohorts in the Administration though we may, for the most part, share a letter of affiliation politically, there is deep dissatisfaction across the Nation with the continued pursuit of a schizophrenic policy that is wholly impractical. I thank you for your time and your indulgence. I thank you, Mr. Chairman.

Chairman MCCRERY. Yes, sir. Thank you, Mr. Hayworth. Gentlemen, we have a couple of votes on the floor, so if you don't mind, we are going to recess the Subcommittee just long enough for us to go over and vote and return. If the first panel wouldn't mind staying, there are still Members who would like to address questions to you. Is that satisfactory?

Mr. EVERSON. I never like taking questions from Earl Pomeroy, if that is who you mean?

[Laughter.]

Chairman MCCRERY. Well, I don't know if he will come back, but the Committee is in recess.

[Recess.]

Chairman MCCRERY. The Committee will come to order. Thank you, gentlemen, for being patient and waiting as we completed those votes on the floor. Now, we will resume questioning with Mr. Pomeroy.

Mr. POMEROY. I thank the Chair and especially note my feelings of appreciation to Commissioner Everson. Now that I am not Ranking Member anymore, I did not expect such courtesy as to have you wait. The—you will forgive my confusion, but in reading the testimony, I am having a little trouble understanding where principally this worksite enforcement business falls. I have listened very closely to the discussion earlier in this hearing. I think it was Congressman Johnson, who noted that worksite enforcement actions were three last year. That is from a number of 417 in 1999; three in 2004.

Now, this worksite enforcement of the immigration law, Mr. Baker, is principally DHS Immigration; right?

Now, I note in your testimony you state a vigorous enforcement of our worksite immigration laws is a crucial step in moving toward a system where foreign migrant workers are employed in this country legally and transparently.

Can you describe to us how this jibes? It looks to us like worksite enforcement has not been something that has been subject to much attention at DHS.

Mr. BAKER. I am glad to address that. There has been a shift in the way in which we have approached worksite enforcement, including a focus on critical infrastructures, as I said earlier. We are particularly concerned about people who are not here legally working in baggage handling facilities at airports or at chemical plants where they could do real damage with an act of sabotage or just an accident.

There has also been an increased focus on trying to find ways to work with employers to get employers to do some more work, take more responsibility for doing some of the screening; getting employers to join the basic pilot so that they can check people at the intake point rather than afterward when we are trying to get access to no-match records.

I think there is no doubt that we need to expand our enforcement efforts. We need better tools to be able to do that. I am hoping that the Administration shortly will be proposing new ways of doing enforcement so that we can improve our record.

Mr. POMEROY. The DHS is having a tough week, and let me acknowledge that I think you have a very difficult job, an impossible job, in light of some of the circumstances—various laws and then circumstances on the ground leave you to resolve.

Sometimes I think that from the dais here we don't appropriately recognize the extraordinary difficulty of your mission. Having said that, it seems to me that this is a time where DHS, this enormous Agency, that obviously has yet to figure out how to effectively use all the wherewithal at its disposal, be it natural disaster response in Katrina, as we are seeing in the Senate this week, or worksite immigration law enforcement, which has dropped to three actions last year, even though your testimony this morning says it is a crucial step—your words. We have got some hesitation about now you

want to get all this IRS data. I don't know that you have fully figured out how to use the data you have already got.

Now that is—maybe in the rest of my time we can get to the bottom whether or not we think that there is quite the treasure trove of information here that you think there is. You indicate that there is a—this SSN mismatch is all about evasion of immigration laws.

Commissioner Everson, do you think—or Commissioner Lockhart—are there other explanations? Do you conclude that all of these mismatches represent a fraudulent effort to hide illegal immigration or sometimes do people just screw up, and it is inadvertent error or attributed to other reasons?

Mr. LOCKHART. You want me to go?—Well, certainly the mismatch file, which, as I said, confirms about 8.8 million was for tax year 2003, is composed of a lot of different pieces. We do a lot of scrubbing to try to correct typographical errors and other things, but certainly people change their names. People get married, change their names, and—or the people use the wrong name with the employer, or they mainly use a nickname that doesn't match the name in our records. There is a lot of activity in the suspense file that is not related to undocumented workers. On the other hand, there is probably a significant number that is related to undocumented workers.

Mr. POMEROY. Fifty-fifty. Ninety-ten? Any idea?

Mr. LOCKHART. We really don't have good data on that. I would say it is less than the 90 to 95 percent that DHS has said, but I don't know how much less.

Mr. POMEROY. Okay. My time is up, Mr. Chairman. I thank you. Mr. Everson, next time.

[Laughter.]

Mr. EVERSON. I will look forward to it, sir.

[Laughter.]

Chairman MCCRERY. Ms. Tubbs Jones.

Ms. TUBBS JONES. Thank you, Mr. Chairman. Good afternoon, good morning, gentlemen. It is still morning. Let me start with Secretary Baker. How are you, sir?

Mr. BAKER. Very good. Thank you.

Ms. TUBBS JONES. Good. I need my glasses, because this print is too little. Maybe that is why your employers don't want to fill this out. The OMB Form 1615-0047, Employment Eligibility Verification, are you familiar with that form?

Mr. BAKER. I am not sure that I am.

Ms. TUBBS JONES. Okay. Novena. It is called an I-9?

Mr. BAKER. Yes.

[Laughter.]

Ms. TUBBS JONES. All I have to do is give you the right number; right?

Mr. BAKER. Yes, exactly.

Ms. TUBBS JONES. Okay. The I-9 has a section that gives employee information and verification, and the employee is required to fill that out with an SSN. Then Section Two is an Employer Review and Verification and has several sections to it. Then it gives the employer—it gives the employer as well as you a list of acceptable documents to document the employee eligibility and the like. Now, this is the same information that you are asking that the IRS

provide to you, or you would like to have from the IRS for purposes of preventing terrorism or whatever; right?

Mr. BAKER. Much of it, yes.

Ms. TUBBS JONES. Now, when you receive this form from the employers, what do you do with it?

Mr. BAKER. We actually, as I remember, we ask them to hang onto that. I am not sure that we are asking them to file that.

Ms. TUBBS JONES. Okay. You ask the employer to hang onto it, so it is information that is within your grasp, since it is a form required by your Department?

Mr. BAKER. We could ask for it, yes.

Ms. TUBBS JONES. Right. Have you ever used this information in order to reach the compliance that you are trying to get from the IRS?

Mr. BAKER. The difficulty with that information is it is in the hands of the employer, and the question is which employer—if we went to an employer, we could say we would like to see your I-9 forms.

The difficulty is in choosing which employer we are going to devote scarce investigative resources to, and what we are hoping is that access to the Social Security information will allow us to say, well, here is a place we ought to look as opposed to—

Ms. TUBBS JONES. Well, now, let me ask you this: Historically, before you ever had this form, you have a group of employers who you believe historically have not complied with or have been—what is the better word—consistently employing people without verifiable or legitimate papers to be in the United States; right?

Mr. BAKER. Right. Yes.

Ms. TUBBS JONES. It clearly is more than the three that you have investigated since 1999; right?

Mr. BAKER. I am sure there are more people than that.

Ms. TUBBS JONES. Wouldn't that be a logical place to start with the employers, just to—even if you just want to try it out and see if it would work and that you wouldn't use scarce resources in order to do that?

Mr. BAKER. The difficulty is picking the right people; picking companies where we are most likely to find abuses. This is a tool that would allow us to identify people who are mostly likely to have abuses to find.

Ms. TUBBS JONES. The IRS has suggested to you that the 300 worst companies are in agriculture, restaurant, and day labor groups. Is that a logical place for you to start your search?

Mr. BAKER. Yes. Certainly, we could look in those industries, but then we would be picking blind among an enormous number of restaurants.

Ms. TUBBS JONES. I am a former prosecutor, and one of the offenses that we deal with—we couldn't catch the person stealing the car, but they were driving the car, so there is an offense called receiving stolen property, other than theft. There is something in the course of what you do that you don't have to necessarily establish the underlying offense, but you could look at the fact that these people were there or whatever in order to reach some compliance. I hate I am running out of time with just you.

I would just hope that there will be other processes by which you would try to figure out how you handle that. I am not necessarily totally in support of the IRS not having to provide the information. I am still angry that when I pick up the phone and call—dial my bank I have to give my SSN in order to reach my money. It is clearly we have gone outside of the traditional private area or what we call private in the sake of tapping my telephone and so forth and so on.

Maybe there would be an opportunity to do what you want to do without reaching into the private area—private information of people.

Mr. BAKER. We are not asking for authority to tap your telephone.

Ms. TUBBS JONES. Oh, I know you personally are not doing that, but somebody is. Not my personal phone, but I mean—well, we won't—what I am talking about? Everybody does. It has been all over TV.

I yield back my time. Thanks—if I have any.

Chairman MCCRERY. Thank you. Mr. Everson, Mr. Lockhart, and Mr. Baker, thank you very much for your testimony, and your answering our questions. We look forward to having you back in not too many more months to get an update on this important issue. Thank you.

Mr. BAKER. Thank you.

Chairman MCCRERY. Now, I would call the second panel. The Honorable Patrick P. O'Carroll, Inspector General, SSA; Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, General Accountability Office (GAO).

Thank you, both, for being patient, as we worked our way through the first panel and the votes like the first panel, your written testimony will be admitted to the record in its entirety, and we would like for you to summarize your testimony in about 5 minutes. We will begin with Mr. O'Carroll.

**STATEMENT OF THE HONORABLE PATRICK P. O'CARROLL,
INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION**

Mr. O'CARROLL. Good afternoon, Chairman McCrery, Chairman Ramstad, and Members of both Subcommittees. Thank you for the invitation to be here today. Today's issue is one of the most persistent we have faced in our 11 years as an organization—SSN misuse as it pertains to the reporting of wages. As you know, SSA receives wage reports, W-2 forms from employers, and posts the wages to workers' accounts.

When a wage report contains errors and cannot be properly posted to a worker's account, it is instead placed in the ESF. As of November 2005, there were 255 million wage items placed in the ESF, representing \$520 billion in wages through Tax Year 2003. In 1998, SSA's first IG testified before Congress and identified the major challenges facing SSA. After solvency, the first challenge on his list was the ESF. In 2002, SSA's second IG testified that the ESF remained one of the great challenges facing SSA. He also placed particular emphasis on immigration, and on the impact unauthorized workers have on the ESF.

Now, I stand before you, as SSA's third IG. The ESF remains one of SSA's greatest challenges, and the most significant impediments to resolving that challenge are unchanged: first, the lack of sanctions against the most egregious employers; and, second, legal obstacles that prevent SSA from sharing data with employers and immigration authorities. It would be an unfortunate neglect of the trust placed in us if SSA's fourth IG someday testifies that the same two obstacles remain in place.

Last year, we issued two audit reports that highlighted the need for an effective program of sanctions against employers who repeatedly submit high volumes of erroneous wage reports: the first report noted significant problems in the restaurant, service, and agriculture industries, and repeated prior recommendations for SSA to intensify talks with the IRS aimed at convincing IRS to make more effective use of existing sanctions.

The second report recommended more outreach to employers as part of the issuance of "no-match" letters by SSA. However, SSA responded that with no fear of retribution, employers had generally determined that their current practices met their needs.

A high proportion of ESF entries results from wages reported for work performed by non-citizens who do not have work authorization from DHS. Unfortunately, SSA and the IRS interpret current law so as to prohibit SSA from sharing information from the ESF with the DHS, even as it pertains to the most consistently egregious employers. Information that could help address the ESF problem is in SSA's hands, but SSA must remain mute. The authority to sanction and deter employers is in the IRS' hands, but the IRS rarely exercises that authority.

While the ESF is the largest repository of misinformation, another file exists that is similarly troubling. Each year, SSA is required by law to submit to DHS the names and SSNs of all employees with wages reported under the "non-work" SSNs.

While SSA shares this information with DHS, little has been done to analyze and utilize the information, and, more importantly, the disclosure laws I mentioned earlier also prohibit SSA from informing employers that they have illegal workers in their employment.

In summary, disclosure laws handcuff SSA and DHS and keep them from making meaningful progress with respect to unauthorized non-citizens, and with regard to the ESF, this difficulty is exacerbated by the lack of sanctions against employers who have been given no reason to comply with the law.

Without meaningful change, you will likely hear the same frustration from my successor that you have heard from my predecessors and from me.

Thank you again for inviting me to be here today, and I will be happy to address any questions you may have.

[The prepared statement of Mr. O'Carroll follows:]

**Statement of The Honorable Patrick P. O'Carroll, Inspector General,
Social Security Administration**

Good Morning, Chairman McCrery, Mr. Levin, Chairman Ramstad, Mr. Lewis. It's a pleasure to be here today to discuss these important issues of mutual interest. I was disappointed when I was unable to testify at the first hearing in this "SSN High-Risk Issues" series due to a previously scheduled trip abroad, but I understand

that the hearing went very well, and I'm pleased to be here for the second hearing in the series.

Since this is our first time together since I was sworn in as the Social Security Administration's (SSA) Inspector General, I'd like to take just a moment to familiarize you with our organization. We were established on March 31, 1995, the day SSA became independent of the Department of Health and Human Services (HHS) by virtue of the Social Security Independence and Program Improvements Act of 1994. Prior to that, the Inspector General for HHS was charged with stewardship responsibilities over SSA's programs and operations. Last year, we marked the completion of our first decade of service as an organization, and I believe that our accomplishments over that first decade are a testament not only to our talented and hard-working staff, but to SSA and its leadership, who have been ceaselessly supportive of our efforts.

Our office, like all Federal offices of Inspector General, has two statutory components:

Our Office of Investigations is comprised of 388 Special Agents and support staff, located in about 70 cities across the country. By conducting independent criminal investigations into violations of the Social Security Act and the U.S. Criminal Code, we protect SSA funds, SSA programs, and most importantly, SSA employees on a daily basis. We also work closely with other Federal agencies to ensure homeland security, and provide for disaster relief and integrity in recovery operations, such as in the aftermath of Hurricane Katrina last year. In Fiscal Year 2005, the Office of Investigations opened over 9,500 criminal investigations, resulting in well over 2,000 convictions, and almost a quarter billion dollars in restitution orders, repayment agreements, fines, recoveries and savings. Our Special Agents are among the most talented and committed law enforcement officers in the land, and I'm enormously proud of the work they do.

Our Office of Audit is equally impressive. Across the country, some 154 auditors and support personnel conduct in-depth audits and reviews of Social Security programs and operations to ensure that tax dollars are wisely spent and benefits are properly paid. In Fiscal Year 2005, the Office of Audit issued 108 reports, identifying potential savings of about \$375 million, and over \$187 million in funds that could be put to better use.

In addition to these statutory components, our Office of Chief Counsel, in addition to providing legal advice and guidance to me and my staff, administers the Civil Monetary Penalty (CMP) program. Through their efforts, imposing civil penalties on those who would defraud SSA, or would use SSA's good name to deceive the American public, we assessed more than \$700,000 in penalties and assessments in Fiscal Year 2005.

Finally, our Office of Resource Management makes all of our work possible. By providing budget, human resource, information technology, and other critical services, they keep the Office of the Inspector General running.

Over the course of what is now almost 11 full years, we have seen issues resolved and, more often, new issues arise, but there are issues that we inherited on Day One that are still with us after all this time. The challenges we are discussing today are among those that have persisted.

As you know, SSA receives wage reports from employers and posts the wages to workers' accounts. This enables SSA to make accurate benefit eligibility determinations and administer its programs. But when a wage report contains errors, and cannot be properly posted to a worker's account, it is instead placed in the Earnings Suspense File, or ESF, until it can be resolved. As of November 2005, there were 255 million wage items placed in the ESF, representing \$520 billion in wages through Tax Year 2003. Looking at ESF entries on a yearly basis, the number of entries increased significantly during the decade between 1993 and 2003, but starting in 2001, the increases stopped, and began holding steady. While this is a hopeful sign, we do not believe it means that a solution has been found. To the contrary, while hard work by my office and by SSA has slowed the tide, the same obstacles to truly meaningful improvement in the ESF that existed a decade ago remain in our paths today.

In 1998, less than 3 years after the formation of our office, SSA's first confirmed Inspector General testified before Congress and identified the eight greatest challenges facing SSA. After identifying solvency as the first issue, he stated that "Second is the problem of erroneous wage reports held in SSA's Suspense Account. At the end of FY 1997, the cumulative balance of employee wages held in SSA's suspense account exceeded \$240 billion, and it continues to grow. Unless corrected, suspended wages could reduce the amount of Title II benefits paid to individuals and their families. SSA must implement its newly established tactical plan to resolve suspended wages and evaluate its effectiveness." In the years that followed, we

made many recommendations through our audit work and provided evidence through our investigations of a need to implement those recommendations, but the issue remained largely unresolved.

More than 4 years later, in 2002, SSA's second confirmed Inspector General appeared before Congress and testified that the ESF remained one of the great challenges facing SSA. In that testimony, he identified the two most significant obstacles to improvement in the ESF. First, he pointed out that without a robust program of sanctions against employers who habitually misreport earnings for their employees, there is no incentive for employers to comply with the law, and that the authority to impose such sanctions rested with the Internal Revenue Service (IRS). Second, he emphasized the role that unauthorized non-citizens play in the increases in the ESF, and the fact that IRS disclosure laws limited the data sharing necessary to bring about significant improvement. Again, our efforts, and SSA's efforts, continued, but these two obstacles remained in place.

Now, 4 more years have passed, and I stand before you as SSA's third confirmed Inspector General. More recommendations have been made to SSA; some have been agreed to, some have even been implemented. Nevertheless, the ESF remains one of SSA's greatest challenges, and the most significant impediments to resolving that challenge are unchanged: the lack of a meaningful program of sanctions against the most egregious employers, and legal obstacles that prevent SSA from sharing meaningful data with immigration authorities and employers.

I would submit that it would be an unfortunate neglect of the trust placed in all of us if, when my tenure is over, SSA's fourth confirmed Inspector General walks through these doors and tells the same story.

Last year, we issued two audit reports that highlighted the need for effective sanctions against problem employers. One of these reports addressed the issue of misreported wages in some of the most problematic industries—the restaurant, service, and agriculture industries—and repeated yet again the need to collaborate with the IRS on an effective sanctions program. Unfortunately, talks with the IRS have been ongoing for years, and even with respect to the nation's most egregious violators of the wage reporting laws, sanctions are rarely imposed. We have recommended in the past that SSA seek legislative authority to create an SSA-based sanctions program, but they have responded that this authority is properly with the IRS. We have recommended repeatedly that SSA intensify talks with the IRS to bring about a robust IRS-based sanctions program using long-existing authority, and SSA has generally followed our recommendations, but to no avail. Whether through the creation of new authority or more active use of existing authority, sanctions are an absolutely critical element of any plan that hopes to reduce the size of the ESF in a meaningful way.

The second report we issued last year sought new approaches to the problem, recognizing that while sanctions and expanded disclosure authority were the keys to significant progress, other measures could be taken that would at least bring about some degree of improvement. We looked at SSA's process for notifying employers and wage-earners of misreported wages, a process known as "DECOR," or Decentralized Correspondence. When name and SSN information on a W-2 form do not match, and the wages must be posted to the ESF, SSA sends a "no-match letter" to either the employee or, if there is no proper address for the employee, to the employer, pointing out the discrepancy and requesting a correction. Since prior recommendations dealing with encouraging IRS to make better use of its authority to impose sanctions had not yet borne fruit, this report instead focused on actions that SSA can take with the information in the DECOR database to bring about some degree of improvement in the wage reporting process.

We made several recommendations to SSA aimed at improving outreach, education, and trend analysis. While SSA agreed with many of our points, they returned to the issue that has become a central theme in looking at the ESF, stating that employers would still have little reason to change their ways. In its comments, SSA stated that "educational outreach is not a strong motivator for change with employers who have found their current wage reporting methods meet their needs without fear of any retribution."

The disclosure issue is similarly daunting. We believe the chief cause of wage items being posted to the ESF instead of an individual's earnings record is unauthorized work by noncitizens. Under existing law, as interpreted by SSA and the IRS, SSA cannot share data from the ESF with the Department of Homeland Security (DHS). For example, these laws make it impossible for SSA to provide DHS information regarding even the most egregious employers who routinely submit large numbers of inaccurate wage statements in which employee SSNs and names do not match SSA records. We believe disclosure limitations such as these perpetuate illegal work, erroneous wage reports, and the growth of the ESF. Most of the informa-

tion necessary to address the ESF problem is in SSA's possession, but SSA must remain mute; all of the authority to sanction employers and deter continued violations is in the IRS' hands, but the IRS chooses not to act. The only greater surprise than this bureaucratic gridlock is the fact that the ESF is not even larger than it is.

While the ESF is by far the larger indicator of unauthorized noncitizens working in the U.S., another indicator which involves a smaller population of individuals engaged in unauthorized work is the Nonwork Alien, or NWALIEN File, and here again, disclosure issues pose an obstacle. We have issued multiple reports, and are on the verge of issuing yet another, that address the impact that non-citizens without authorization to work in the United States are having on SSN integrity, the Agency's future responsibility to pay benefits and, even more disturbing, improper employment in sensitive and critical industries. In 2000, 2001, and again in 2005, we examined SSN misuse and wage reporting issues with a focus on wages improperly earned by non-citizens without authorization to work in the United States—those whom SSA has assigned “nonwork” Social Security numbers. Each time, we identified as a significant obstacle in addressing this issue the limited ability of SSA to share information. SSA is required by law to annually share with DHS the NWALIEN File, a file of noncitizens who have received earnings using a non-work Social Security number. However, since this law was enacted in 1996, little has been done by SSA and DHS to analyze, attempt to reconcile and/or correct, and use this information for immigration enforcement purposes. Additionally, SSA believes privacy provisions of the Internal Revenue Code prohibit SSA from notifying employers when employees with non-work SSNs, who may not have DHS authorization to work, are in their employ. While SSA and DHS have extensive information at their disposal, they have been unable to find a way to work with the information to prevent, detect, and enforce unauthorized employment.

In short, our work has shown, over the course of more than a decade, that until these obstacles are removed, either through legislation or cooperation, there is unlikely to be a truly meaningful reduction in the size of the ESF. Unless and until employers are either required to verify SSNs prior to submitting wage reports, or faced with stiff penalties for erroneous wage reports, there is no incentive for employers to do anything differently. And with limited ability to share meaningful information with immigration authorities and employers, there is relatively little SSA can do alone to address the significant impact non-citizens have on the ESF, the NWALIEN file, and ultimately, SSN integrity.

The information is at our fingertips. We can identify the most egregious employers with respect to wage reporting irregularities, but no action is taken against them by IRS, and no action *can* be taken against them by our office or by SSA. We can identify the employers with the most unauthorized non-citizens on their payrolls, but we cannot tell the employers who the unauthorized employees are. We know the scope of the unauthorized non-citizen issue is significant, but SSA cannot share adequate information with DHS to provide truly useful information.

We will, of course, continue our work aimed at quantifying and identifying discrete issues and proposing program improvements, but these improvements will likely continue to be relatively minor when viewed against the size of the ESF. We stand ready, however, to work with you and other members of Congress to bring about truly meaningful change.

Thank you again for inviting me to speak with you today, and I'd be happy to answer any questions.

Chairman MCCRERY. Thank you, Mr. Inspector General. Ms. Bovbjerg.

STATEMENT OF BARBARA D. BOVBJERG, DIRECTOR, EDUCATION, WORKFORCE, AND SECURITY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. BOVBJERG. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, Ms. Tubbs Jones. I am happy to be back today, this time to discuss the use of SSN data to reduce unauthorized work. No one is lawfully permitted to work in the U.S. without a valid SSN and either citizenship or work authorization. Yet, non-citizens work without such authorization and gain employment using false

information. How such unauthorized work can be detected and prevented clearly continues to challenge the agencies involved.

Today, I would like quickly to discuss two things: the Social Security data that can help identify unauthorized employment and issues for improving the usefulness of the data. First, let me talk about the Social Security data. The SSA has two types of data useful to preventing and detecting unauthorized work: the Participant Records and the Earnings Reports. Participant records that include the name, date of birth, and SSN, among other things, can be used to verify that a worker seeking employment is providing the SSN assigned to someone of that name.

The SSA uses these data to provide both batch and web-based verification services for employers' use on a voluntary basis. The service is designed to assure accurate employer wage reporting and discourage hiring of unauthorized workers are offered free of charge. The SSA also uses Participant Records in a verification system developed by DHS—DHS offers electronic verification of worker status by a program called the Basic Pilot.

This program sends employee data through SSA to verify name and SSN, and, for non-citizens, also through DHS to verify that the person is both legally present and authorized to work. This system too is voluntary and has only recently been available nationwide. None of these verification systems is widely used by employers.

The SSA's earnings data provide a different sort of information. There are two SSA data files for these records that Mr. O'Carroll mentioned. The first, SSA's Non-Work Alien File, contains earnings reports that are posted under non-work authorized SSNs. These records are thought to belong to a group of people who may be in the U.S. legally that may also be working without authorization. Under law, SSA passes this file to DHS annually, but, as Mr. O'Carroll stated, little has been done with that information.

The second type of earnings data is found in the ESF. The ESF holds earnings reports where the name and SSN cannot be matched to records in SSA's Participant Files. The GAO has reported that this file, which contains almost 300 million records, appears to include an increasing number of earnings records associated with unauthorized work, but is not regularly used as a DHS enforcement tool because the file contains legally protected taxpayer information. Let me turn now to the usefulness of the data in addressing unauthorized work.

Under the current arrangement with the Non-Work Alien File, DHS staff believe they would have to invest significant resources to determine which workers are truly still unauthorized; a number of those whose records are in the Non-Work Alien file may have been authorized but have not informed SSA of the change in status. Also, the lack of a common identifier for records in DHS and SSA files makes the matching process difficult and time consuming, and the lack of industry codes associated with the employers prevents DHS from targeting employers in the critical infrastructure areas that are important to homeland security.

The ESF, on the other hand, potentially has employer information that is more useful to DHS, but some of the same difficulties that pertain to the Non-Work File could also affect the Suspense File's usefulness, and the sensitivity of sharing taxpayer records

means the case for their use outside SSA must be truly compelling. If the challenges of the ESF can be overcome, authorizing transmittal of at least some of that protected information to DHS might be warranted. It is likely that producing accurate and useful unauthorized work data from these records could require a continued effort on the part of SSA, DHS, and IRS, but these efforts will be of little value without credible and coordinated enforcement programs in place.

The three agencies will still need to improve employer reporting and worksite enforcement efforts, if measures to improve the usefulness of existing data are to bear fruit.

In conclusion, the Federal Government can make better use of information it already has to support enforcement of immigration, work authorization, and tax laws. The Suspense and Non-Work Alien Files have promise. The best information in the world won't make a difference if the relevant Federal agencies cannot work together to improve employer reporting compliance and conduct targeted and effective worksite enforcement. That concludes my statement. I welcome your questions.

[The prepared statement of Ms. Bovbjerg follows:]

Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, U.S. Government Accountability Office

Messrs. Chairmen and Members of the Subcommittees:

I am pleased to be here today to discuss Social Security numbers (SSNs) and their use in preventing and detecting unauthorized work. To lawfully work in the United States, individuals must have a valid SSN and, if they are not citizens, authorization to work from the Department of Homeland Security (DHS). Noncitizens seeking work are required to provide both an SSN and evidence of work authorization to their employers. Yet individuals without these required authorizations can gain employment with false information. How these instances of unauthorized work can be identified or prevented challenges the federal agencies involved.

In prior GAO work on these issues, we have reported on the use of Social Security Administration (SSA) data for identity and employment eligibility verification. Although SSA's verification systems have improved, use of SSA information in worksite enforcement continues to be challenging. Today I will discuss two issues: (1) the Social Security data that could help identify some unauthorized employment and (2) coordination among SSA, DHS, and the Internal Revenue Service (IRS) to improve the accuracy and usefulness of such data.

My statement is based primarily on prior GAO work on these topics.¹ We are presently conducting additional work for these subcommittees examining the use of SSA data for detecting unauthorized work. To determine how SSA and DHS are coordinating to improve earnings data, we conducted interviews with officials from SSA, the SSA Office of the Inspector General, and DHS. In addition, we obtained and reviewed data from SSA on individuals who had reported earnings under a non-work SSN, and we reviewed other documentation provided to us by these agencies. We began this review in October 2005 in accordance with generally accepted government auditing standards, and our work is ongoing.

In summary, SSA has two types of data that could be useful for addressing unauthorized work—Social Security records for individuals and earnings reports. Individual Social Security records include name, date of birth, and SSN, among other things. SSA uses these data to provide SSN verification services free of charge to employers wishing to assure themselves that the names and SSNs that their workers provided match SSA's records. SSA also uses Social Security records in a work authorization verification system called the Basic Pilot program developed by DHS, which offers electronic verification of worker status. These systems are voluntary and not widely used by employers. SSA's earnings records provide a different sort of information that could be used for identifying unauthorized work. SSA uses such records to produce two relevant files. SSA's Nonwork Alien File contains earnings reports that are posted to SSNs that were issued for nonwork purposes, which suggests individuals are working without DHS work authorization. By law, SSA provides nonwork alien information to DHS annually, and our ongoing work for you

suggests that a number of these records are associated with people who became work authorized some time after receiving their nonwork SSNs. A second file of interest, the Earnings Suspense File (ESF), contains earnings reports in which the name and SSN do not match SSA's records.² We have reported that this file, which contained 246 million records as of November 2004, appears to include an increasing number of records associated with unauthorized work.³

Improving the usefulness of SSA data could help identify some unauthorized work and ensure that limited enforcement resources are targeted effectively. Ensuring that the most useful data are available requires close coordination among the three federal agencies involved in collecting and using the data—SSA, IRS, and DHS. We have previously recommended that IRS work with DHS and SSA as it considers strengthening its employer wage reporting regulations, as such action could improve the accuracy of reported wage data, and that DHS, with SSA, determine how best to use such wage data to identify potential illegal work activity.

Background

The Social Security Act of 1935 authorized the SSA to establish a record-keeping system to help manage the Social Security program and resulted in the creation of the SSN. SSA uses the SSN as a means to track workers' earnings and eligibility for Social Security benefits. Through a process known as enumeration, each eligible person receives a unique number, which SSA uses for recording workers' employment history and Social Security benefits. SSNs are routinely issued to U.S. citizens, and they are also available to noncitizens lawfully admitted to the United States with permission to work. Lawfully admitted noncitizens who lack DHS work authorization may qualify for an SSN for nonwork purposes when a federal, state, or local law requires that they have an SSN to obtain a particular welfare benefit or service. In this case, the Social Security card notes that the SSN is "Not Valid for Employment."⁴ As of 2003, SSA had assigned slightly more than 7 million nonwork SSNs. Over the years, SSA has tightened the requirements for assigning nonwork SSNs.

In 1986, Congress passed the Immigration Reform and Control Act (IRCA), which made it illegal for individuals and entities to knowingly hire and continue to employ unauthorized workers. The act established a two-pronged approach for helping to limit the employment of unauthorized workers: (1) an employment verification process through which employers are to verify newly hired workers' employment eligibility and (2) a sanctions program for fining employers who do not comply with the act. Under the employment verification process, workers and employers must complete the Employment Eligibility Verification Form (Form I-9) to certify that the workers are authorized to work in the United States. Those employers who do not follow the verification process can be sanctioned.

SSA Individual Records and Earnings Reports Can Identify Some Unauthorized Work

SSA has two types of data useful to identifying unauthorized work—individual Social Security records and earnings reports. Its individual records, which include name, date of birth, and SSN, among other things, can be used to verify that a worker is providing the SSN that was assigned to a person of that name. These records are used in verification services that are available free of charge to employers on a voluntary basis. SSA's earnings reports could also be used to identify some unauthorized work by reporting noncitizens who may have worked without authorization and employers who have a history of providing SSN/name combinations that do not match SSA records.

SSA Records Provide Verification Services to Improve Wage Data

SSA uses individual Social Security records in its Employee Verification Service (EVS) and the Web-based SSN Verification Service (SSNVS), which employers can use to assure themselves that the names and SSNs of their workers match SSA's records. The services, designed to ensure accurate employer wage reporting, are offered free of charge. Employer use is voluntary. Although these systems only confirm whether submitted names and SSNs match, they could help employers identify workers who provide an SSN with fictitious information.

Over the years, SSA has developed several different verification methods under EVS. For example, employers may submit lists of workers' names and SSNs by mail on a variety of media, such as magnetic tapes or diskettes. Alternatively, employers may call a toll-free number or present a hard-copy list via fax, mail, or hand delivery to a local SSA office. SSA verifies the information received from employers by comparing it with information in its own records. SSA then advises the employer whether worker names and SSNs match. EVS offers the benefit of verifying name and SSN combinations for a company's entire payroll. However, the system would

not be able to detect a worker's misuse of another person's name and SSN as long as the name and SSN matched. Employers do not widely use this service.

In an attempt to make verification more attractive to employers, in 2005, SSA implemented the Web-based SSNVS. It is designed to respond to employer requests within 24 hours. Requests of up to 10 worker names and SSNs can be verified instantaneously. Larger requests of up to 250,000 names can be submitted in a batch file, and SSA will provide results by the next business day. While this new system is attracting more employer interest, it is still not widely used.

SSA also uses its records in a work eligibility verification system developed by DHS called the Basic Pilot, which offers electronic verification of work authorization for newly hired workers.⁵ Use of this program by employers is also voluntary, and the service has been available nationwide only since December 2004. Employers who agree to participate must electronically verify the status of all newly hired workers within 3 days of hire, using information that a new hire is required to provide. Under this program, an employer electronically sends worker data through DHS to SSA to check the validity of the SSN, name, date of birth, and citizenship provided by the worker. SSA records are used to confirm information on citizens. For noncitizens, SSA confirms SSN, name, and date of birth, then refers the request to DHS to verify work authorization status against DHS's automated records.⁶ If DHS cannot verify work authorization status for the submitted name and SSN electronically, the query is referred to a DHS field office for additional research by immigration status verifiers. If SSA is unable to verify the SSN, name, and date of birth or DHS record searches cannot verify work authorization, a tentative nonconfirmation response is transmitted to the employer. After checking the accuracy of the information and resubmitting the information, if necessary, the employer must advise the worker of the finding and refer him or her to either DHS or SSA to correct the problem. During this time, employers are not to take any adverse actions against those workers related to verification, such as limiting their work assignments or pay. When workers do not contest their tentative nonconfirmations within the allotted time, the Basic Pilot program issues a final nonconfirmation. Employers are required to either immediately terminate employment or notify DHS of their continued employment.

Like SSA's verification services, the Basic Pilot is voluntary and is not widely utilized. As of January 2006, about 5,500 businesses nationwide had registered to participate, although a significantly smaller number of these are active users.⁷ Active participants have made about 4.7 million initial verification requests over a 5-year period (981,000 requests were made in fiscal year 2005). DHS reported on actions taken to address weaknesses in the program that had been identified during the early years of the program. They included delays in updating immigration records, erroneous nonconfirmations, and program software that was not user friendly. We subsequently reported on additional challenges, specifically, the capacity constraints of the system, its inability to detect identity fraud, and the fact that the program is limited to verifying work authorization of newly hired workers.⁸

SSA Earnings Data May Be Used to Identify Some Unauthorized Work

SSA's earnings records can also provide information on unauthorized work. There are two sets of data that are relevant to unauthorized work. The first set, the Nonwork Alien File, contains earnings reports for SSNs that were issued for nonwork purposes. The second set, the Earnings Suspense File, contains earnings reports in which the name and SSN do not match. Both could help identify some unauthorized work.

SSA's Nonwork Alien File

SSA is required by law to provide its Nonwork Alien File to DHS since it suggests a group of people who are in the United States legally but may be working without authorization.⁹ Since 1998, SSA has provided DHS annual data on over half a million persons with earnings listed under nonwork SSNs. The file includes annual earnings amounts, worker names and addresses, and employer names and addresses as well.

DHS has found this file to be of little use to enforcement activities, however. According to DHS officials, the file is currently not an effective tool for worksite enforcement due in part to inaccuracies in the data and the absence of some information that would help the department efficiently target its enforcement.¹⁰

In fact, because SSA only updates work authorization status at the request of the SSN holder, individuals in the file may now be U.S. citizens or otherwise legal workers who simply have not updated their status with SSA. Our ongoing work in this area suggests that a number of these records are indeed associated with people who later obtained permission to work from DHS. SSA policy is to update work author-

ization status when the SSN holder informs the agency of the status change and provides supporting documentation.¹¹ Unless the individual informs SSA directly of the status change, SSA's enumeration records will continue to show the person as unauthorized to work and will record his or her earnings to the Nonwork Alien File. Currently, the extent to which such noncitizens are included in the file is unknown, but SSA and DHS officials have both acknowledged that the file may include a number of people who are currently authorized to work.

DHS officials said that the file would be of greater value if it contained DHS's identifying numbers—referred to as alien registration numbers. According to DHS officials, because persons in the file do not have an identifier in common use by both agencies, they cannot automatically be matched with DHS records. As a result, DHS officials told us that they use names and birth dates to match the records, which can result in mismatches because names can change and numbers in birth dates may be transposed. SSA officials have said that generally they do not collect alien registration numbers from noncitizens. Collecting the alien registration number and providing it in the Nonwork Alien File is possible, they stated, but would require modifications to SSA's information systems and procedures. They also noted that SSA would only be able to collect the alien registration number when noncitizens are assigned an SSN or when such an individual updates his or her record. As part of its procedures, SSA is required to verify the immigration status of noncitizens before assigning them an SSN, which requires using alien registration numbers.¹² However, some noncitizens, such as those who have temporary visas, (e.g. students) may not have an alien registration number. In these cases, SSA would not be able to include the number in the Nonwork Alien File.

The time it takes SSA to validate earnings reports and convey the Nonwork Alien File to DHS also makes the file less effective for worksite enforcement. When SSA finishes its various processes to ensure that the file includes the appropriate data, the reported earnings can be up to 2 years old. By that time, many of the noncitizens included in the file may have changed employers, relocated, or changed their immigration status, resulting in out-of-date data on individuals or ineffective leads for DHS agents.¹³

A DHS official told us that if the Nonwork Alien File were to contain industry codes for the reporting employers, DHS could target those in industries considered critical for homeland security purposes, which would be consistent with DHS's mission and enforcement priorities. Having information about the industries the employers are in would help them better link the data to areas of high enforcement priority, such as airports, power plants, and military bases.

Earnings Suspense File

Another SSA earnings file, referred to as the Earnings Suspense File, contains earnings reports in which the name and SSN do not match SSA's records, suggesting employer or worker error or, potentially, identity theft and unauthorized work. We have reported that this file, which contained 246 million records as of November 2004, appears to include an increasing number of records associated with unauthorized work. SSA's Office of the Inspector General has used the ESF to identify employers who have a history of providing names and SSNs that do not match.

When SSA encounters earnings reports with names and SSNs that do not match, it makes various attempts to correct them using over twenty automated processes. However, about 4 percent of all earnings reports still remain unmatched and are electronically placed in the ESF, where SSA uses additional automated and manual processes to continue to identify valid records. Forty-three percent of employers associated with earnings reports in the ESF are from only 5 of the 83 broad industry categories, with eating and drinking establishments and construction being the top categories. A small portion of employers also account for a disproportionate number of ESF reports. For example, only about 8,900 employers—0.2 percent of all employers with reports recorded in the ESF for tax years 1985–2000—submitted over 30 percent of the reports we analyzed.¹⁴

Our past work has documented that individuals who worked prior to obtaining work authorization are a growing source of the unmatched earnings reports in the ESF that are later reinstated to a worker's account. Once workers obtain a valid SSN, they can provide SSA evidence of prior earnings reports representing unauthorized employment prior to receiving their SSN. Such earnings reports can then be used to determine a worker's eligibility for benefits.¹⁵

DHS officials believe that the ESF could be useful for targeting its limited worksite enforcement resources. For example, they could use the ESF to identify employers who provide large numbers of invalid SSNs or names and SSNs that do not match. They told us that these employers may knowingly hire unauthorized workers with no SSN or fraudulent SSNs and that employers who are knowingly reporting

incorrect information about their workers might also be involved in illegal activities involving unauthorized workers.

However, it is not clear that the ESF, which is much larger than the Nonwork Alien File, would be manageable or allow for targeted enforcement. The ESF contains hundreds of millions of records, many unrelated to unauthorized work, making it difficult to use for targeting limited resources. While the ESF may help identify some of the most egregious employers of unauthorized workers, in terms of poor earnings reporting, its focus is not on unauthorized workers. Our work has shown that most of the reinstatements from the file belong to U.S.-born citizens, not to unauthorized workers.¹⁶ In addition, because the ESF contains privileged taxpayer data, SSA cannot share this information with DHS without specific legislative authorization.¹⁷ SSA's Office of the Inspector General has recommended that SSA seek legislative authority to share this data with DHS, but SSA responded that it is beyond the agency's purview to advance legislation to amend the Internal Revenue Code in order to allow DHS access to tax return information.¹⁸ IRS officials have also expressed concern that sharing this data could decrease tax collections and compliance.¹⁹ We are examining the usefulness of SSA data to DHS for these subcommittees, and will consider ESF issues as part of this work.

Closer Coordination by SSA, IRS, and DHS Could Improve Usefulness of SSA Earnings Data

Improving the usefulness of the data could help ensure that limited enforcement resources are targeted effectively. SSA data could help identify areas of unauthorized work, but closer collaboration among SSA, IRS, and DHS can help to ensure that the most useful data are available in a form that can be used efficiently for enforcement.

Under the current data-sharing arrangement, DHS officials believe the agency would have to invest significant resources to determine whether employers it targets are really hiring persons who are not work authorized. DHS has stated that determining which nonwork SSN holders are now authorized to work may not be cost-effective and would pull resources from other national security-related initiatives.²⁰ Neither SSA nor DHS is able to easily and quickly update work status because they lack a common identifier for their records. Updating status without a common identifier may not be practical because different spellings or name variations confound large-scale matching efforts. For example, an August 2005 report from the SSA's Office of the Inspector General highlights a substantial proportion of cases in which names were inconsistent between SSA and DHS.²¹ In at least six reports in recent years, SSA's Office of the Inspector General has recommended or mentioned prior recommendations that SSA work with DHS to update information about work authorization.²² SSA officials maintain that it is their policy to make changes to the Social Security record only if the SSN holder initiates the changes and provides evidentiary documents from DHS. SSA further states that a "resolution of the discrepant information between DHS and SSA would require more than a simple verification."²³

Despite the many problems with the data, there are steps that could be taken to improve them. For example, the employers who submit the most earnings reports for nonwork SSNs might be good candidates for outreach and education about verifying work eligibility. SSA's Office of the Inspector General officials suggested that DHS send letters to employers of persons with nonwork SSNs. These letters could encourage persons listed as having nonwork SSNs, who are now authorized to work, to update their records. The ESF also has the potential to provide useful information to DHS, but this information has protected tax status. Although some of the same difficulties that pertain to the Nonwork Alien File could also affect the usefulness of the ESF to DHS enforcement efforts, if these challenges could be overcome, authorizing transmittal of at least some of the ESF information to DHS might be warranted.

Producing accurate, useful data will require substantial continued effort on the part of SSA, DHS, and the IRS: these efforts will be of little value, however, if the data are not used for enforcement and to stimulate changes in employer and employee behavior. We have reported previously that the IRS program of employer penalties is weak, because of limited requirements on employers to verify and report accurate worker names and SSNs; we have recommended that IRS consider strengthening employer requirements, a course that could over time improve the accuracy of wage data reported to SSA.²⁴ We have also reported that, consistent with DHS's primary mission in the post-September 11 environment, DHS enforcement resources have focused mainly on critical infrastructure industries in preference to general worksite enforcement. [25] In such circumstances, coordination to leverage

usable and useful SSA data is essential to ensure that limited DHS worksite enforcement resources are targeted effectively.

Concluding Observations

The federal government likely can make use of information it already has to better support enforcement of immigration, work authorization and tax laws. The Earnings Suspense and the Nonwork Alien files have potential, but even the best information will not make a difference if the relevant federal agencies do not have credible enforcement programs. In fact, sharing earnings data to identify potential unauthorized workers could unnecessarily disclose sensitive taxpayer information if the data are not utilized by enforcement programs. To address unauthorized work more meaningfully, IRS, DHS and SSA need to work together to improve employer reporting, develop more usable and useful data sets for suspicious earnings reports, and better target limited enforcement resources. We look forward to contributing to this endeavor as we continue to conduct our work on using SSA data to help reduce unauthorized work.

This concludes my prepared statement. I will be happy to answer any questions you may have.

Chairman MCCRERY. Thank you, Ms. Bovbjerg. To both of you, you both mentioned in your testimony how the recent trends in the ESF seems to indicate an increase in illegal work and SSN fraud and misuse. I wonder if I can get you to expound upon that a little bit. You have obviously, both offices, done extensive examination of the composition of the ESF. Can you, for example, describe the characteristics of employers with the largest number or highest percentage of wage reports in the ESF, or the characteristics of employees whose earnings are in the ESF?

Mr. O'CARROLL. I will respond first. What has come out in previous testimony is that sort of the trends that we are coming up with are that the three employment groups with the largest number of wage reports in the ESF are the service industry, the restaurant industry, and the agriculture industry.

In one of our previous testimonies, we indicated that the states with the most wage reports in the ESF are California, Texas, and Illinois. What we are finding is that about the same number of wage reports go into the ESF every year, which is about 9 million reports. Although the number of wage reports going into the ESF is level over the last several years, we are finding that the number of problem employers is increasing. Therefore, although we have identified these problem employers, they keep posting more and more wage reports into the ESF, which is problematic.

Ms. BOVBJERG. We took a little different cut at the ESF. We looked at records between 1985 and the year 2000. There were 85 million records. We found certain types of errors come up all the time. Nine million of the records had SSNs of all zeros. For 3.5 million of the records, employers used the same SSN for multiple workers in the same year. One and half million had SSNs had never been issued. There were a lot of these types of problems. We found an industry concentration similar to the IG findings we saw eating and drinking establishments, and, we found construction was the second largest industry in the group of records that we looked at. We also found that 8,900 employers—this is out of the 6 million who send information annually to SSA—8,900 were responsible for more than 30 percent of the ESF records we reviewed.

The reason that we think that there could be more unauthorized work coming into the ESF is that we looked at reinstatements. You really can't tell from looking at the ESF records where people were born and who they are. That information wouldn't be in the ESF. You can tell something by looking at information on those records that were reinstated to someone's Social Security account. We looked at 265 numbers that came up more than a thousand times in the period that we examined.

Of those, there were 13 million reinstatements to almost 12 million different people on these most frequently used numbers. What we found was that in 1986, about 8 percent of those people who received reinstatements were foreign-born. The vast majority was U.S.-born. By 2000, the majority was still U.S.-born, but we were up to about 20 percent of the reinstates being foreign-born. Of those, almost half involved earnings received prior to the individual getting a work authorized SSN. We thought that while it is a tremendous exaggeration to say that the ESF represents unauthorized work, I think it is fair to say that there is an increase in mismatches that are the result of unauthorized work.

Chairman MCCRERY. Thank you. Ms. Bovbjerg, you are familiar with, I am sure, the bill that the House recently passed. It hasn't passed the Senate, so it is not law, just a House-passed bill. That bill would require employers to verify SSNs and employment eligibility through an electronic system modeled on the Basic Pilot program.

Your organization, the GAO, though, in a 2005 report stated that the Basic Pilot program has some serious weaknesses. It does not detect identity theft. The DHS databases are not up to date. Employers may use the verification service to engage in discriminatory practices, and verifications may be delayed if system use increases substantially. Based on the GAO's research, if the Basic Pilot were to be made mandatory, as under the provisions of the House bill, would this system have the capacity to handle some 6 million employers in this country?

Ms. BOVBJERG. We have some concern about that. When we did that work last year and looked at the processes at DHS, one of our recommendations was to assess the feasibility and cost of correcting the weaknesses in the Basic Pilot. This is a recommendation that the Department has accepted and said that they will pursue. Simply doing that is a big job. Making sure that those things are corrected is an even bigger job. I don't know whether they will be ready or not, but it would be something that I think DHS should be concerned about. SSA, however, says that they are ready for their part in a mandatory Basic Pilot.

Chairman MCCRERY. How many employers now are covered under the Basic Pilot?

Mr. O'CARROLL. I have that figure. About 8,000 employers are under the Basic Pilot.

Chairman MCCRERY. Eight thousand.

Mr. O'CARROLL. Out of 6.5 million employers.

Chairman MCCRERY. Eight thousand. We go from 8,000 to 6.5 million. Have you have any thoughts on if the Basic Pilot were made mandatory, would we see an increase in the use of counterfeit documents, like the SSN card or would we see an increase in

identity theft, because people would know that they are being checked?

Ms. BOVBJERG. If everything is up and running, and we are—we as a government—are able to run a verification process like that—

Chairman MCCRERY. Right.

Ms. BOVBJERG. —I think it would undermine the value of the fake identity information. You would have to have a working system with a credible enforcement program behind it.

Chairman MCCRERY. Which may involve changes to the SSN card itself, to make it tamper proof or less subject to theft, or—

Ms. BOVBJERG. It depends really on what kind of role that the Social Security card would have in the whole I-9 process, which I know is under review at DHS.

Chairman MCCRERY. Are you concerned that we are not ready as a government to move forward with making this program mandatory for all employers?

Ms. BOVBJERG. I always like to try things out before we go to a full implementation, and I know we have been running the Basic Pilot as a pilot program. I think what we found is that a significant portion of the verifications have to be done by hand. That concerns me for opening it up to 6 million employers. Does that mean we can't do it? No. I think it means that we would have to really plan how we go forward and how long it is going to take to be ready to do that. I would be concerned if we went ahead with a mandatory verification where the government is not really prepared to provide the verifications that are required.

Chairman MCCRERY. Mr. O'Carroll, do you have any thoughts on this?

Mr. O'CARROLL. I concur. The reason we endorse pilots is to test a process to see how it is working. As I noted before, what we are getting from employers in terms of the Basic Pilot from our surveys is that employers like it. They feel it is working well. It is getting a great response. I think our responsibility and the GAO's responsibility is to monitor these pilots; give them some time to work out; and then report back. We have been working on surveys in relation to the Basic Pilot, and in relation to SSNVS to get more information for the Subcommittee as to the viability of rolling the Basic Pilot out to all 6.5 million employers.

Chairman MCCRERY. Okay. Thank you. Mr. Lewis.

Mr. LEWIS OF GEORGIA. Thank you, Mr. Chairman. Ms. Bovbjerg, your testimony implies that you think that the IRS should share tax return information with DHS. Are you saying or suggesting that the law should be changed?

Ms. BOVBJERG. I am not ready to suggest that today. We have work underway for these Subcommittees looking at the Non-Work Alien File and how useful that might truly be to DHS enforcement efforts and what alternatives exist. Certainly the Earnings ESF could be an alternative, and it is something that we will also look at. I would say that even if there are data that could help DHS, if DHS is not ready to use that information in a credible enforcement program, that would not meet our criteria for providing tax access.

Mr. LEWIS OF GEORGIA. Do you happen to know the views or the position of the Comptroller General?

Ms. BOVBJERG. On this particular issue?

Mr. LEWIS OF GEORGIA. Right.

Ms. BOVBJERG. I do not. I have not spoken to him directly on this exact issue. I know that when we ask for 6103 authority ourselves, we only do it when we are positive that we need access to that information to do something in particular that we have already figured out what we are going to do. I am just a little concerned about going forward and saying DHS needs this information. When I am not sure they are ready to use it in an enforcement program.

Mr. LEWIS OF GEORGIA. Thank you very much. Mr. O'Carroll, do you believe employers should have a greater responsibility to verify the identity, SSN, and immigration status of their employees? Where should the burden be?

Mr. O'CARROLL. Mr. Lewis, I believe that employers do have such a responsibility. For example, we have noted in one of our audits that a certain employers are reporting the same SSN for 900 different employees. There are trends, and I think that is the important part.

Mr. LEWIS OF GEORGIA. Let me—you are saying a certain employer—

Mr. O'CARROLL. Yes. One employer.

Mr. LEWIS OF GEORGIA. One—the same SSN—

Mr. O'CARROLL. Nine hundred times.

Mr. LEWIS OF GEORGIA. Is that widespread or just one of the tools?

Mr. O'CARROLL. I am using that as an egregious example, Mr. Lewis. What we are also finding is that certain employers are using sequential SSNs numerous times. They will submit an SSN for an employee. Then for the next employee, use the next SSN in the sequence. There are egregious employers out there. We think that it should be brought to their attention that they are incorrectly reporting the SSNs so that they can take corrective actions.

Mr. LEWIS OF GEORGIA. Are you prepared today to make any particular recommendation for additional employer responsibility? If so, who supports your position?

Mr. O'CARROLL. I believe what we noticed from the first panel today was that we have got three agencies that have equal concerns in terms of information that is being supplied by the employers. Each one has mentioned it in one way, shape, or form. We all have concerns as to the information we are getting from employers and we need to have methods to encourage employers to verify the SSNs they are reporting. Yes, I think that employers should—the laws that we have now should be used to force employers use better scrutiny in terms of the SSNs they are reporting.

Mr. LEWIS OF GEORGIA. Thank you very much. Thank you, Mr. Chairman.

Chairman MCCRERY. Mr. Ramstad.

Chairman RAMSTAD. Thank you, Mr. Chairman. I want to thank both the witnesses for their testimony. Director Bovbjerg?

Ms. BOVBJERG. Bovbjerg.

Chairman RAMSTAD. Bovbjerg. I would like to ask you a question, if I may please? The GAO's 2005 report on immigration enforcement, are you familiar with that report?

Ms. BOVBJERG. Yes, I am.

Chairman RAMSTAD. The report found that the number of notices of intent to fine, as well as worksite enforcement arrests, by DHS had decreased considerably since 1999 in that 6-year period. In fact, the report found that worksite enforcement arrests had declined by 84 percent between 1999 and 2003. Shouldn't we be concerned with this lack of enforcement and since the GAO released its report last year, have you noticed any changes or improvements made by DHS in fulfilling its responsibilities?

Ms. BOVBJERG. We know that what we were told about the drop off in the intention to fine and in the arrests had to do with not only a shift of focus to the anti-terrorism efforts that Secretary Baker spoke about in critical infrastructure areas; airports; power plants; and so on, that the agency is also looking at alternatives to making arrests and fines; that they are looking more at civil settlements as a way of more effective use of their resources.

Whether they have taken actions that would change that approach I do not know. Our report was released at the end of the summer, in August, so there hasn't been a lot of time for DHS response to it.

I do think that DHS has been very clear with us that there is a shift in priorities. They have limited enforcement resources, and we—in always looking at any kind of enforcement—I look at pension enforcement, too—we always say it is better to target the limited resources that you have.

I think the question here is it only critical infrastructure enforcement that the Congress wants to see or does the Congress want to see a more general worksite enforcement, in which case those priorities would need to be reordered.

Chairman RAMSTAD. Doesn't that mean enforcement is essentially a joke? An 84 percent decrease. I understand the reordering of priorities, but I also understand the laws and the regulations, and it seems to me that we shouldn't be picking and choosing which laws to enforce. You haven't really seen any changes or improvements by DHS in this regard since that report; is that a correct statement?

Ms. BOVBJERG. I cannot really answer that question because I am not an expert on the immigration issue.

Chairman RAMSTAD. I understand. Let me ask you for the remaining minute or two I have, IG O'Carroll, about information sharing between SSA and DHS. I know in a 2001 report, the SSA IG recommended that SSA collaborate with INS, which, of course, was then incorporated in DHS, to develop a better understanding of the extent that immigration issues contribute to SSN misuse and the growth of the ESF. Also, the SSA IG recommended that the SSA, reevaluate its application of existing disclosure laws or come to Congress for legislative authority to remove barriers that pertain to information sharing.

Given the fact that this information sharing issue has been studied exhaustively I know by the SSA IG and so forth, do you have

any conclusion or observations as to which data would you recommend SSA share with DHS?

Mr. O'CARROLL. Yes, Chairman Ramstad. There is some very basic information that I believe would be useful, and it ties into my answer to Mr. Lewis. We have information on chronically bad employers, the ones that are hiring the vast majority of employees posting bad wages or using bad SSNs to post their employees wage reports. We feel that that is important that we should be able to inform those employers that one, we will be employing and notifying DHS of the trends in that employment industry, and the most egregious employers that are involved in the industry and posting bad wage reports and two, as part of SSA's employer outreach programs and let them know that they are one of the worst violators in forms of the posting bad wages reports. I think that would have a very positive effect in terms of the education of employers as well as enforcement.

Chairman RAMSTAD. Again, I want to thank both the witnesses.

Chairman MCCRERY. Ms. Tubbs Jones.

Ms. TUBBS JONES. Thank you, Mr. Chairman. I always have to take myself back to other jobs when I start thinking about some of this. When I first became the elected DA in Cuyahoga County, Ohio, we had no computer system connecting the prosecutor, the courts, the sheriff. It was the craziest thing, and I sat and said, it can't be that all these smart people can't figure out what they are supposed to do with all this information.

I am stunned in your statement—I think it is Ms. Bovbjerg's statement—let me check and make sure before I—no, I am sorry—Mr. O'Carroll's statement at page 5, you say while SSA and DHS have extensive information at their disposal, they have been unable to find a way to work with the information to prevent, detect, and enforce unauthorized employment.

How many people do you have allocated to figuring out a way you work with all this information to get an answer?

Mr. O'CARROLL. Being in the IG's office, we have made recommendations to SSA and to DHS to work those issues out. What was stated in the earlier testimony this morning from DHS is that they have problems with the SSA information they are given. For example, SSA tracks the individuals by their SSN, while DHS indicated that it tracks the individual by their Alien Number. Because of that, they have had difficulties in matching the SSA information.

We have made numerous recommendations asking for the two agencies to work with each other. I agree with you, Congresswoman Tubbs Jones, I think technology has caught up to a point now that with the other information that is in that file, even though one agency tracks under one number, and another agency tracks under a different number, that they should be able to find a commonality to be able to identify which person is which, and pick up the trends. It ties in with what my colleagues from GAO have found that there is a lot of useful information that is going over to DHS that they can be using for their trend analysis if they have inclination to use the available computer technology to be able to make that information viable.

Ms. TUBBS JONES. The money that comes from—okay. I am an employee, and I am in an ESF. The dollars, the FICA dollars that I pay, where do they sit? Do they collect interest? What happens with those dollars if I am in the ESF mode? The employer had to pay it, whether it was right or wrong; right?

Ms. BOVBJERG. Yes. We—the government have already spent that money. It is just cash into the Treasury.

Ms. TUBBS JONES. It is just cash into the Treasury?

Ms. BOVBJERG. Yes. Yes. The record of that contribution of yours—SSA doesn't know it is yours, or it wouldn't be in the ESF.

Ms. TUBBS JONES. Right. Understand.

Ms. BOVBJERG. It is still there, with your earnings record.

Ms. TUBBS JONES. What would you—what is your recommendation? Take your—can you take your hat off as an employee of the Federal Government—

Ms. BOVBJERG. Never.

Ms. TUBBS JONES. —let's see. I give you immunity. With what the heck should we be doing? This is outrageous that we can't work out a system in which to address this. I am big on privacy. I don't want you to invade my privacy, and I have already claimed that my SSN is used for everything but my Social Security. What would you do? You have been in this business a long time. Let us figure it out. What can we do? I have got probably 2 minutes, so each of you get a minute left.

Ms. BOVBJERG. Okay. Well, I will talk fast. I can never take my GAO hat off.

Ms. TUBBS JONES. Okay. Pretend. I want to put another hat on top of the GAO hat. Consultant to the Subcommittee on Social Security.

Ms. BOVBJERG. We have said before that we need to improve the data that are reported at the worksite; that that would help SSA. It would also help discourage unauthorized work.

Ms. TUBBS JONES. Then better thing we need to do is have one location? If you want to go work for ABC Company, you come to this location. You give us the information, and we send all that information to ABC company, then we already have a place where we collect all the information about workers. Has anybody ever thought about that?

Ms. BOVBJERG. Well, in some ways, a verification system—

Ms. TUBBS JONES. The lady behind you is frowning. Come on you can tell me.

Ms. BOVBJERG. —in some ways a verification system that does go to SSA and DHS is going to a central repository.

I think that really what I am talking about is that we have not established a credible system of penalizing employers for misreporting. That is something that the IRS is working on I understand. That is something that they need to work on with SSA and DHS. It is not only a tax issue, and it is something that would help reduce suspense file mismatches. It is very fundamental. The other side is that we need to devote some resources, whether existing resources or additional resources I don't know, but we need to devote some resources to general worksite enforcement at DHS.

Ms. TUBBS JONES. Begging your indulgence, Mr. Chairman, can I get a 1-minute response from Mr. O'Carroll?

Mr. O'CARROLL. Probably the most valuable lesson that I learned from the first panel today was when the Commissioner of IRS asked for 1 year to come back and report to you to see what has changed in that year. One of those things I would like to see changed in that year is that IRS would use their enforcement capabilities to penalize the employers that are chronically misreporting wage information.

The other thing that I would like to see happen in this year regarding the information that we have been giving to DHS, which is identifying problem employers for non-work aliens would be, for DHS to initiate some action on the information. Hopefully, in my tenure as the IG, we will see that these three agencies are talking to each other and that we get synonymous databases where we can all be working off of the same information.

Ms. TUBBS JONES. My guess is the employers know what a hard time we are having trying to figure this out, and they said, the heck with y'all. We will just go on and do our thing, and when you all catch up with us, we will have gotten our workers, made our money, and probably gone bankrupt or whatever.

Thank you, Mr. Chairman.

Chairman MCCRERY. You are quite welcome. Mr. Levin.

Mr. LEVIN. Thank you. I am sorry I was at another meeting, and I missed the testimony. I guess I think I know enough about it to ask a couple quick questions. Your comment about wishing that we would penalize employers for false information more effectively. This has been an issue we have been discussing for a long time. The assumption underlying that statement is that in many cases, we know enough, we have enough information, to put to employers who are not meeting the law. Is that a correct statement?

Ms. BOVBJERG. In my belief, we do. The reasonable cause standard that the IRS uses is waived if there is intentional disregard. I still do not understand why intentional disregard is not used more frequently because, as Mr. O'Carroll reported, we have employers who time after time after time use the same SSN for all their employees. That is a little different I would submit than goofing up and mis-reporting once.

Mr. LEVIN. I think it is important for us to take that into account because if the focus is mainly on the data, we may not understand the full picture, because what you are saying is in many cases where we have the data, and much of it relates to a smaller number of states, and I think you testified a relatively small number of companies, there hasn't been effective action vis a vis those companies.

Secondly, if all this data pours in, how do you think it is disaggregated by DHS so that they can go after their main target and that is potential terrorists? Has anyone figured out what the relationship would be between more data available to DHS and the implementation of their basic function?

Ms. BOVBJERG. That is a concern we have, and that is something that we are going to look at as part of the work that we are doing for the Subcommittees on the non-work alien file and other sources of data that might be useful to DHS.

Mr. LEVIN. Okay. Thank you, Mr. Chairman.

Chairman MCCRERY. Thank you, Mr. Levin. Thank you, Mr. Ramstad, Mr. Lewis, and thank you, Mr. O'Carroll and Ms. Bovbjerg, very much for your testimony. This is an issue that does require I think a lot of thought, and we are looking forward to receiving at some point from the Administration some concrete proposals as to how to tighten this system to say the least. Thank you very much.

Ms. BOVBJERG. Let us know if we can help.

Chairman MCCRERY. The hearing is adjourned.

[Whereupon, at 12:43 p.m., the Subcommittee was adjourned.]

[Questions submitted by Chairman McCrery to the Honorable James B. Lockhart and his responses follow:]

Question: The SSA sends letters to employers who report more than 10 W-2s with a name/SSN mismatches, representing at least one-half of one percent of all W-2s, reported by the employer. The SSA also sends a letter to each employee who has earnings with a name/SSN mismatch. What is the impact of these letters on removing wage reports from the earnings suspense file?

Answer: The SSA has ongoing efforts, such as the No Match Letter and the Social Security Statement, that provide individuals with an opportunity to review and correct their earnings records. In addition to SSA's initiatives, a worker may discover an error in his/her earnings when s/he gets a Form W-2 with incorrect information, or even when the IRS withholds an expected income tax refund. Once an error is identified, there are several ways the worker can notify SSA to correct the earnings record. However, we cannot quantify the number of wage reports removed from the earnings suspense file as a result of any one of these ongoing efforts.

As noted, the employer and employee No Match letters are one way SSA tries to notify a worker of the possibility of errors in his/her Social Security record. Letters sent to employees include a scannable form on which the worker may submit corrections to SSA. For tax year (TY) 2003, we removed 206,000 records from the earnings suspense file based on these scannable forms. We cannot tell how many records were corrected by employees contacting SSA in another way, for example by contacting a local filed office.

Similarly, the employer No Match letter asks employers to submit a corrected Form W-2 if the original information that the employer submitted was incorrect. Our best proxy for gauging responses to the employer no match letter is the number of corrected Forms W-2 (W-2C) SSA receives that correct only name and/or SSN. For TY 2003, we received 241,000 such corrected W-2s. However, of those, approximately 196,000 provided corrected information on wage items SSA had already been able to correct and post to the worker's record. Generally, this occurs because the employee No Match is sent prior to the employer's No Match letter, allowing the employee to take action to correct his/her record before the employer submits a Form W-2C. Fewer than 7,000 records were actually removed from the suspense file as a result of corrected Forms W-2. The remaining Forms W-2C submitted did not provide correct information.

It should be noted that, in some cases, the employee's information on the submitted Form W-2 is more current than the information in SSA's records (for example, when an employee gives her married name to her employer but has never notified SSA to report her legal name change). It is the employee's responsibility to update his or her information with SSA. Once SSA's records have been updated to reflect the most current information, the wages can be posted to the individual's record. A corrected Form W-2 is not needed.

Question: In 2002, rather than send letters to employers with more than 10 W-2s with name/SSN mismatches, SSA sent letters to each employer with even one W-2 with a name/SSN mismatch. Why did SSA not continue that policy?

Answer: In calendar year 2001 (Tax Year (TY) 2000), SSA sent 109,157 letters to employers. In calendar 2002 (TY 2001), SSA sent 950,000 letters to employers. Every employer with even one name/SSN combination that did not match SSA records received a letter. In evaluating the effectiveness of this activity, we determined that the total cost to SSA, including the cost of producing and mailing the letters and handling follow-up calls to employers, was approximately \$1.3 million. For reasons discussed above, we estimate that only about 35,000 items were actu-

ally removed from the suspense file. As a result, SSA determined that sending letters to all employers with W-2s that could not be posted was disruptive and not a cost-effective use of resources. In calendar year 2003 (TY 2002), SSA instituted our current threshold for sending employer No Match letters, sending 126,000 such letters to employers. However, though the number of letters was greatly reduced, the No Match letters that were sent to employers covered 7.6 million out of a total of 9.8 million mismatches, at a savings of approximately \$1 million from the previous year. In addition, employers received 1.9 million individual letters for employees, for whom we did not have valid addresses.

Question: Several bills introduced this Congress would require employers to verify the employment eligibility of new hires through a database that combines data from the SSA's SSN applications and DHS's immigration records. Currently, in the Basic Pilot program, the two sources of data are kept separate, and each agency independently verifies the information without sharing it with the other agency. Is there any particular advantage or disadvantage to combining the databases? Would it increase the accuracy of the data? Would it increase the speed of verifications? Would it improve program administration? What effect might it have on the privacy of personal information?

Answer: The Basic Pilot Program matches the information submitted by an employer against the information in SSA databases and DHS databases. Each agency maintains the data necessary for the administration of its programs. By specializing, each agency focuses on its respective primary mission. Each must be responsible for its own business processes, including the collection, integrity and accuracy of certain information. If these databases were to be combined, one agency would be burdened with the management of data which it does not collect, cannot verify and which is not related to its business purposes. Also, it would require additional resources for that agency. Further, a combined data base would be less accurate than two separate data bases since combining the data would involve transmitting updated information from the source data base. At any point in time, some data on the combined data base would be out of sync with the source data base that contains the most current information.

Since the current process is online, the increase in the speed of verifications would probably be negligible. Creating a database maintained by one agency might well increase the length of time to correct information because each agency would retain the applicable business process to ensure that policy was followed in entering and/or correcting the data.

With regard to the effect on the privacy of personal information, combining the databases could undermine certain privacy interests currently recognized in the Privacy Act 1974 (P.L. 93-579). For example, the Privacy Act protects the principle of minimization, which ensures that agencies retain only such information necessary to accomplish a program mission. In addition, the Privacy Act also suggests that information be collected to the extent possible from the subject of the record, as opposed to other sources such as Federal agencies. However, if Federal statute required combining the databases, every effort would be made to assure that the newly created system of records would conform to Privacy Act principles and standards for security, just as the separate databases are protected today.

Question: In a 2001 report, Obstacles to Reducing SSN Misuse in the Agriculture Industry, the SSA IG recommended proposing legislation that would provide SSA with authority to require chronic problem employers to use the Agency's SSN verification services. At the time, SSA disagreed, saying the IRS already had authority to penalize employers who do not comply with wage reporting requirements. However, as the IRS has no record of penalizing even employers with high name/SSN mismatch rates in their wage reports, would SSA rethink its position?

Answer: We continue to believe that the ability to impose sanctions on employers who fail to provide matched names and SSNs for their employees should be the sole responsibility of the IRS. Sanctions against employers serve as a tool to obtain compliance with employment tax withholding and reporting requirements which are under the jurisdiction of the IRS. Unlike the IRS, SSA does not have the tools to enforce a compliance program against employers. Attempting to establish such a program within SSA would take resources away from SSA's primary mission and could adversely affect public trust and confidence in the program.

We note that the Administration recognizes worksite enforcement as a critical component of comprehensive immigration reform, and it supports mandating an employment eligibility verification system in a manner that is not overly burdensome to employers. The Administration looks forward to working with Congress to ensure

that implementation of such a system makes efficient use of technology, is operationally effective, and gives employers the tools they need to verify work eligibility quickly and accurately.

Question: In a February 2005 report, GAO said that SSN verification services for paper or phone requests require the worker's date of birth, but that electronic requests do not. Why is the date of birth required only for verification through certain media? Would correcting this inconsistency in SSN verification services help prevent individuals from using the SSNs of children to engage in unauthorized work?

Answer: The SSA has always offered name/SSN verification services to employers to ensure that an employee's name/SSN matches for wage reporting purposes. The telephone and paper listing versions of the Employee Verification Service, and our Field Office procedures, have been in use for many years, and require four fields for verification: name, SSN, date of birth (DOB), and gender.

SSA's new SSNVS was designed as a quicker and more convenient verification service for employers. During its development, we obtained input from potential users. Employers advised SSA that requiring DOB and gender presented an additional, and perhaps unnecessary, burden, since this information is not needed for wage reporting and is not included on the Form W-2. In response to that feedback, SSA designed SSNVS to include the DOB and gender as optional fields to help employers to distinguish between, for example, two Pat Smiths.

The SSA did not change the other verification services which require the DOB and gender field when SSNVS was developed. However, we continue to examine the requirements in our verification systems to determine whether changes may be needed.

Question: The SSA requires employers to register to use the Agency's SSN verification services if the employer is requesting more than 50 verifications, or any number of verifications using magnetic media. Therefore, employers calling the Agency's toll-free 1-800 number to verify up to five names and SSNs are not required to register, nor is anybody requesting verification of up to 50 names by submitting the request on paper. What does the registration agreement require of employers? Why does the Agency have different registration requirements based on the number of requests and the media used, especially since the GAO noted in February 2005 report that some SSA officials believe that some larger employers with significant turnover have dedicated staff whose job is to call the 1-800 number throughout the day to bypass the five-worker per call verification limit?

Answer: Through our toll-free numbers, SSA offers Employee Verification Service (EVS) for up to five name/SSN combinations at a time. For purposes of this activity, the employer's EIN (Employer Identification Number) is verified, but we do not require registration. In addition, up to 50 name/SSN combinations can be submitted on paper to our local field offices for EVS. Again, registration is not required.

For large scale EVS requests, that is, over 50 name/SSN combinations, a registration process is required. To register for EVS, employers must complete a registration form and have it signed by a manager or authorized official of the company. The title of the signer must follow the signature. The employer must also sign and date a Federal privacy act statement. These forms (and explicit instructions) are available in the Employee Verification Service Handbook at <http://www.ssa.gov/employer/ssnvadditional.htm> The registration form and the privacy act statement must be mailed or faxed to SSA. Once SSA has processed the registration request, SSA mails the employer a Requester Identification Code. This code must be displayed on the paper or magnetic media submission and on any EVS correspondence with SSA.

The Federal Privacy Act Statement makes it clear that anyone who obtains SSN verification information under false pretenses, or uses it for a purpose other than for which it was requested, may be punished by fine, imprisonment or both. It also makes it clear that any employer that uses the information SSA provides regarding name/SSN verification as a pretext for taking adverse action against an employee may violate state or Federal law and be subject to legal consequences.

We are studying the issue you raise regarding different registration requirements to determine whether procedures are needed to advise employers calling the 800 number of the sensitivity of the verification information they are requesting and the importance of using it carefully.

Question: The SSA currently does not have authority to pursue civil or criminal penalties for employers who submit wage reports with name/SSN mismatches. Similarly, SSA does not have the authority to require employ-

ers with a high number of percentage of name/SSN mismatches in their wage reports to confirm employees' information using the Agency's verification services. Would you recommend that Congress give SSA such authority? If Congress were to give such authority to SSA, how might the Office of the Inspector General utilize it? Could you provide your recommendations for specifying such authority?

Answer: Currently, the U.S. Department of the Treasury and, specifically, the IRS have enforcement authority over employers with respect to the submission of wage reports and payment of employment and income taxes both for the employer and the employee.

The SSA processes wage reports (W-2s) as an agent for the IRS. These tax documents are submitted each year by employers. The IRS is aware of any errors in these reports. The IRS has full enforcement authority over employers with regard to the submission of erroneous tax information, including the submission of erroneous W-2s. In addition, DHS has sole authority to enforce worksite compliance with immigration laws.

The SSA is not an enforcement agency. The SSA IG does investigate cases where, for example, individuals defraud the Social Security system of funds or submit false information in order to claim benefits. Any information developed by the IG is then turned over to appropriate SSA employees or to a U.S. attorney for appropriate action. However, SSA does not have expertise in enforcement of tax reporting requirements. Before making such a fundamental change in SSA's mission from that of a benefit paying agency to tax reporting enforcement agency with concurrent jurisdiction with IRS, I believe Congress would want to carefully consider the impact of such a change on SSA priorities and costs. Such a change would alter the perception of the Agency in the eyes of the public as well as diminish the enforcement effectiveness of the IRS and DHS.

Question: The Commissioner of the IRS expressed concern in his testimony about the effect of increased enforcement of wage reporting accuracy on tax compliance. What are your thoughts on the potential implications for your Social Security's finances? In other words, do you believe increased enforcement would result in more payroll taxes being collected, or less? Also, please provide any information you have on the effect of non-payment of payroll taxes on the wages of tax paying workers. In other words, if employers can hire employees while avoiding payroll taxes, does that depress wages for all employees?

Answer: By law, the OASDI trust funds are ultimately credited with amounts reflecting tax liability due for all wages in OASDI covered employment reported by employers on Forms 941 and W2 (and not with amounts actually collected). The IRS and SSA have programs in place to resolve inconsistencies in total wages reported by employers on the forms. Hence, an increase in enforcement of wage reporting accuracy on employers would influence OASDI revenue only to the extent that it affects the amount and timing of wages reported by employers.

With regard to whether increased enforcement activity in this area would result in a decrease in wage reporting and therefore a decrease in wage tax receipts, SSA would defer to the expertise of the IRS in evaluating the impacts of this type of change on wage reporting and tax compliance.

The SSA would defer to IRS and the U.S. Department of Labor with respect to the impact of nonpayment of payroll taxes on the wages of taxpaying workers.

Question: The Immigration Reform and Control Act (IRCA) of 1986 (P.L. 99-603) prohibited the hiring of illegal aliens and mandated fines for violators. Why then are employers not permitted to use the SSA's SSN verification services to screen potential workers before they are hired? Would it require a change in law to allow employers to use the SSA's SSN verification services to verify information on potential hires? What would Congress need to do to be sure that applicants are screened before they start working?

Answer: There would need to be a change in law in order for SSA to verify information on potential hires. Under existing law, the purpose for which SSA verifies SSNs for employers is not for employment verification purposes. The only system that verifies work authorization is the Basic Pilot. SSA's employee verification service is for employer wage reporting purposes under the provisions of section 232 of the Social Security Act (P.L. 74-271). In these situations, there is an established relationship between the employers and the individuals.

Under the Privacy Act 1974 (P.L. 93-579) routine use provision (5 U.S.C. § 552a (b)(3)), SSA may disclose information for a purpose which is compatible with the purpose for which we collect and maintain information. SSA's disclosure regulations

that implement the Privacy Act (20 C.F.R. § 401.150) provide that we may disclose information where necessary to carry out SSA's programs. Under the Social Security Act, SSA collects enumeration information in order to assign SSNs so that SSA can post wage credits to the appropriate worker. The SSA verifies SSNs for employers solely for the purpose of accurately completing the Internal Revenue service's Forms W-2 (Wage and Tax Statement). Forms W-2s are submitted to SSA for the purpose of posting earnings to an individual's record, which will be used to determine future Social Security benefits. Absent a change in law, SSA lacks authority under the Privacy Act to disclose the information prior to the creation of the employer-employee relationship.

Concerning SSN verification for 'potential' employees (e.g., when an individual has filed an application for employment but the employer has not made a commitment to hire him/her), we note that there is no established relationship between the employer and the individual, i.e., there is no basis to assume that the employer will hire and submit a wage report for him/her. Thus, the employer has no need to verify the SSN for wage reporting purposes. In such cases, we cannot establish the requisite Privacy Act and regulatory compatibility criteria to justify verifying SSNs for the employer. In addition, our understanding is that individuals are not required to complete the Form 1-9 (which requires their SSNs) until after they are hired. Pertinent language on the 1-9 form indicates that it is "To be completed and signed by the *employee* the time *employment* begins." (Our emphasis.) We believe a change in law may be necessary in order to verify the SSN before the person is hired.

An employer may use DHS' Basic Pilot or SSA's SSNVS services immediately after hiring an individual. If the employer submits information about an employee that does not match information in DHS or SSA records, the employers should ask the employee to contact SSA and/or DHS to correct its records.

[Questions submitted by Chairman McCrery to the Honorable Patrick P. O'Carroll and his responses follow:]

Question: In a 2001 report, the SSA IG recommended that SSA collaborate with the U.S. Immigration and Naturalization Service (INS) (which was incorporated into DHS to develop a better understanding of the extent to which immigration issues contribute to SSN misuse and growth of the ESF. Also, the SSA IG recommended that SSA reevaluate its applications of existing disclosure laws or seek legislative authority to remove barriers that would allow the Agency to share information regarding chronic problem employers with the INS. Given that the SSA IG has extensively studied the ESF, what data would you recommend SSA share with the DHS?

Answer: The SSA has information related to suspended wages, including information reported by the employer during the Annual Wage Reporting process and information provided by the IRS. As part of the Agency's efforts to resolve employee name and SSN discrepancies, SSA places suspended wage data into a Decentralized Correspondence (DECOR) mailer file so notices can be sent to employees and employers. This information includes:

- Employee's name as reported on the *Wage and Tax Statement* (Form W-2);
- Employee's SSN as reported on the W-2;
- Employee's address as reported on the W-2;
- Employer's *Employer Identification Number* (EIN) as reported on the W-2;
- Address associated with the EIN taken from SSA's Employer Identification File supplied by the IRS;
- Employee's wages as reported on the W-2; and
- Tax year associated with the wages on the W-2.

We believe DHS representatives are in a better position to determine the full extent of SSA information that would assist them in properly enforcing the Nation's immigration laws. However, initially, DHS may be most interested in a list of employers who repeatedly and egregiously file incorrect wage reports, because it appears to indicate the employment of unauthorized noncitizens. For example, SSA could provide DHS information regarding the top 100 employers with the largest number or percentage of wage items in the ESF. To pursue possible investigation and enforcement actions against these employers, DHS would need the employer's name and address, the number of employees with mismatched names/SSNs, the percent of reported payroll that these suspended items represent, and the tax year(s) in question. If DHS determined a more in-depth investigation was necessary, it might also need individual taxpayers' names and reported SSNs to assist them in reviewing employee files. The SSA obtains this information through the wage reporting process and IRS records. Accordingly, the employee wage information is sub-

ject to privacy protections afforded by section 6103 of the Internal Revenue Code. As such, any data sharing would likely require discussions between SSA, DHS and IRS to ensure a proper understanding of the data and compliance with existing laws.

Question: In a 2001 report, *Obstacles to Reducing SSN Misuse in the Agriculture Industry*, the SSA IG recommended introducing legislation that would provide SSA with authority to require chronic problem employers to use the Agency's SSN verification services. At the time, SSA disagreed, saying the IRS already had authority to penalize employers who do not comply with wage reporting requirements. Given the fact that the IRS has no record of penalizing even employers with the largest number or percentage of name/SSN mismatches on W-2s reported, would you encourage SSA to rethink its position?

Answer: We made this recommendation to SSA for the purpose of addressing employers who frequently and egregiously report wages for employees with name and SSN discrepancies. We continue to believe that to significantly stem the growth of SSA's ESF, chronic problem employers should be required to use a verification service. At the time of our 2001 report, the SSA/DHS Basic Pilot was not widely available. However, this program is now open to all employers nationwide. This program has an advantage over SSA's enumeration verification services in that it also provides information to employers regarding an employee's work authorization status. Accordingly, we would now encourage the use of this program.

We certainly recognize the implications of requiring employers to use such a service—including the impact on labor availability for employers who are reliant on the unauthorized noncitizen workforce. However, in lieu of IRS penalties and DHS workplace enforcement, we believe requiring chronic problem employers—who do not already do so—to use the SSA/DHS Basic Pilot could be the best method to address ESF growth. Given that IRS and DHS currently have primary enforcement authority, many of these employers may also be hiring individuals in violation of the Immigration and Naturalization Act (P.L. 99-603), and the Basic Pilot is primarily maintained by DHS, we believe DHS may now be in a better position to enforce a provision such as the one we recommended in our 2001 report.

Question: The SSA currently does not have authority to pursue civil or criminal penalties for employers who submit wage reports with name/SSN mismatches. Would you recommend that Congress give SSA such authority? If Congress were to give such authority to SSA, how might the Office of the IG utilize it? Could you provide your recommendations for specifying such authority?

Given that many of these employers may also be hiring individuals in violation of the Immigration and Naturalization Act and misreporting wages in violation of the Internal Revenue Code, we believe IRS and DHS may be in a better position to pursue civil or criminal penalties for employers who submit wage reports with name/SSN mismatches.

However, if Congress were to afford SSA with the authority to pursue civil or criminal penalties for employers who submit wage reports with name/SSN mismatches, the Office of the IG could utilize such authority under section 1129 of the Social Security Act for false statements and/or representations made to SSA, the felony fraud provisions of the Act found in Title II (42 U.S.C. § 408(a)(1)–(8) and Title XVI (42 U.S.C. § 1383a(a)(1)–(4)), and various Title 18 criminal provisions. With such authority, we recognize that potential jurisdictional issues with IRS will need to be resolved.

Question: In a February 2005 report, GAO said that SSN verification services for paper or phone requests require the worker's date of birth, but that electronic verification requests do not. Would correcting this inconsistency in SSN verification services help prevent individuals from using the SSNs of children to engage in unauthorized work?

We agree that requiring the employee's date of birth in SSA's electronic employee verification services would offer an additional level of assurance concerning the identity of the employee and potentially prevent individuals from misusing the SSNs of children. The employee's date of birth is currently an optional field in SSA's Employer Verification Service for Registered Users and SSNVS. As a result, these systems are already capable of verifying an employee's date of birth when it is provided by an employer. Furthermore, SSA participates in the joint SSA/DHS Basic Pilot program, which requires the employee's date of birth as part of the overall verification process.

[Questions submitted by Chairman McCrery to Barbara Bovbjerg and his responses follow:]

Question: If the Basic Pilot were made mandatory, is it likely that we would see an increase in the use of counterfeit documents like the SSN card? Would we see an increase in identity theft?

Answer: In our August 2005 report on employment verification and worksite enforcement efforts, we said that the Basic Pilot Program has potential to help enhance the verification process and substantially reduce document fraud (use of counterfeit documents) but is unable to detect identity fraud (fraudulent use of valid documents or information belonging to others). A mandatory Basic Pilot verification could make some counterfeit documents more difficult to use to falsely demonstrate work authorization. For example, if an unauthorized worker presented counterfeit documents containing false information, the Basic Pilot program would not confirm the worker's eligibility because the Employment Eligibility Verification Form I-9 information, such as a false name or SSN, would not match the SSA's and DHS database information. An increase in counterfeit Social Security cards, specifically, seems unlikely because the Social Security card is only 1 of 15 documents that can be used to prove eligibility to work. While workers are required to provide an SSN, they are not required to show the card to obtain employment. In addition, use of a counterfeit Social Security card with a false name or number could be detected by employers using the Basic Pilot.

On the other hand, the Basic Pilot's verification system cannot detect identity fraud. The fraudulent use of documents containing the real names, SSNs, and alien identification numbers of work-authorized persons could be used to demonstrate work eligibility and would not be detected through Basic Pilot's verification system. An unauthorized worker could present valid documentation belonging to a work-authorized person or could present counterfeit documentation that contains valid information and appears authentic. In either instance, the Basic Pilot may verify the employee as work-authorized because the documentation matched SSA and DHS data. It is possible, therefore, that identity fraud could increase with mandatory verification, as unauthorized workers could have new incentives to use identities of work-authorized individuals. However, the extent to which identity fraud might increase and unauthorized work might decrease is unknown. The DHS is currently considering possible ways to enhance the Basic Pilot Program to help detect cases of identity fraud.

The requirements established in the REAL ID Act of 2005 (P.L. 109-13) for the issuance of state driver's licenses and identification documents, have the potential to improve identity verification. However, this form of identification is 1 of 20 documents acceptable for proving identity in the I-9 process, and identity fraud could still be possible.

Question: Several bills introduced this Congress would require employers to verify the employment eligibility of new hires through a database that combines data from the SSA's SSN applications and the DHS immigration records. Currently, in the Basic Pilot program, the two sources of data are kept separate, and each agency independently verifies the information for employers without sharing it with the other agency. Is there any particular advantage or disadvantage to combining the databases? Would it increase the accuracy of the data? Would it increase the speed of verifications? Would it improve program administration? What effect might it have on the privacy of personal information?

Answer: Combining DHS's immigration records and SSA's cardholder data likely would not improve the employment eligibility verification process because the existing problems in the verification process are not related to the data sources being kept separate. Using two different databases to verify different pieces of information does not hinder the verification process, as long as the employment verification program is able to query the appropriate databases to verify the relevant information. Delays identified in Basic Pilot's verification process are often the result of delays entering data into DHS's database after DHS makes its initial work eligibility determinations. Since its database is not up-to-date, DHS employees need to verify some work authorizations manually. Combining the databases would not increase the speed of verifications if the speed of DHS's data entry remains unchanged.

Combining the databases would also not improve the accuracy of results provided to the employer because the source of the information would remain the same. The SSA's cardholder identification file is used to verify name, SSN, and citizenship, and DHS's immigration records are used to verify employment authorization using an alien identification number. The SSA's database contains demographic information collected when the SSN was issued or updated, as with a name change, its database

does not reliably contain up-to-date information on the work authorization status of noncitizens. Although combining the two could update SSA's work authorization data, combination is unnecessary for establishing work authorization.

The SSA's program administration might be slightly improved by linking the databases and updating some SSA information on work authorization, but combining them would not be necessary to achieve these improvements. For example, if DHS's data could be used to automatically update SSA's work authorization information, SSA's Nonwork Alien file could potentially become more accurate. However, linking the two databases may be challenging due to the lack of a common identifier. It is not clear how difficult the task of linking the two databases might be, but our ongoing work for the Subcommittee on coordination between SSA and DHS will address these issues.

In addition to providing little, if any, advantage in terms of speed or accuracy, there are possible disadvantages to combining the databases. These databases were developed to aid in the administration of two different programs. Combining them could detract from their intended purposes and could prove costly.

Question: In an August 2005 report, GAO said that document and identity fraud have undermined the "Form I-9" process—the process required under immigration law by which employers verify the identity and employment eligibility of newly hired employees. The GAO recommended a reassessment of the Form I-9 process, including the possibility of reducing the number of acceptable work eligibility documents. Some bills have been introduced this Congress that would make the SSN card the sole identity and employment eligibility document employers could accept, or alternatively would use a combination of an SSN card and a state driver's license or ID card that complies with standards established in the REAL ID Act or a federally-issued ID document. Do you have any thoughts or recommendations on how to reduce the documents employees are required to present to prove identity and employment eligibility?

Answer: The DHS is currently assessing possible revisions to the number of acceptable work eligibility documents but has not established a target timeframe for completing this assessment. Completion of this assessment and issuance of final regulations on acceptable work eligibility documents should strengthen the current employment verification process and make it simpler and more secure. In addition to a reduction in the number of acceptable work eligibility documents, enhancing the integrity of identity and work eligibility documents is also an important consideration in making the employment verification process more secure. We have previously reported on the possible use of biometrics in verification and identification processes. Biometrics can theoretically be very effective personal identifiers because the characteristics they measure are thought to be distinct to each person. While biometrics show promise in enhancing verification and identification processes, we have also reported on the tradeoffs for using biometric indicators, such as concerns regarding the protections under current law for biometric data and the absence of clear criteria governing data sharing.

The Social Security card is of limited use in proving eligibility to work and does not verify identity at all, it is a weak document in the I-9 process, which requires employers to verify the identity and work authorization of newly hired employees. The Social Security card is 1 of 15 documents that may be used to establish an individual's eligibility to work. The card has had many different versions and is easily counterfeited. There is also a history of vulnerabilities in the process of issuing numbers to noncitizens, including limited verification of identity and work authorization documents. In addition, while Social Security cards issued for nonwork purposes carry the label "Not Valid for Employment," nonwork cards issued before May 1982 do not include this statement. We have work ongoing on Social Security card enhancement that will be issued later this month.

Under the REAL ID Act, state-issued driver's licenses and identification documents could improve the identity portion of the employment eligibility verification process. The licenses will be required to include physical security features to prevent counterfeiting and tampering, these identification documents could make the I-9 process less vulnerable to fraud and counterfeiting. However, even under REAL ID Act standards, identity theft could be possible, and each additional document permitted to establish identity and eligibility to work is another opportunity for document fraud and identity theft.

Question: In a February 2005 report, the GAO said that the SSN verification services for paper or phone requests require the worker's date of birth, but the electronic requests do not. Would correcting this inconsis-

ency in SSN verification services help prevent individuals from using the SSNs of children to engage in unauthorized work?

Answer: Requiring the worker's date of birth for SSN verification services could help prevent use of children's SSNs for unauthorized work if employers used the services more frequently and if they refused to hire persons with name, SSN, and birth date combinations that obviously belonged to children. Requiring the date of birth could also help identify other types of fraud, wherein the worker is young, but the SSN is assigned to someone who would be much older or vice versa. The birth date is one additional piece of information that would have to match SSA's data, persons using this information fraudulently would need more than a name and SSN.

[Questions submitted by Chairman McCrery to the Honorable Mark W. Everson and his responses follow:]

Question: The SSA IG has recommended in the past that SSA seek legislative authority to create an SSA-based sanctions program for employers submitting wage reports with mismatched names and SSNs. What are your thoughts about giving SSA such authority?

Answer: We believe that the ability to impose sanctions on employers who fail to take appropriate steps to provide matched names and SSNs for their employees is an essential tool in the effort to obtain high rates of compliance with employment tax withholding and reporting rules. We caution, however, that only a portion of mismatches are due to willful or negligent disregard by employers of current law requirements, the cases where sanctions are likely to be reasonable and effective. The details of an additional, SSA-based sanctions program are unspecified at this point, we do not have a view about whether such a program would reduce mismatches and improve compliance with the tax law. However, since the institutional roles of the IRS and SSA are different, it is possible that a well-designed compliance program administered by SSA could complement the IRS's current program.

Question: In your testimony, you said that about half of wage reports in the suspense file had income tax withheld, and that the withholding tends to be significantly less compared to returns with valid SSNs. Does this mean increased enforcement will yield little taxes? What about Social Security and Medicare taxes? Also, how can you be certain that correct withholding rates are being applied to workers with mismatched wage reports and that they do not have additional earnings being reported under other incorrect SSNs?

Answer: Although we estimate the total income tax impact of the W-2s with invalid SSNs is significant, the benefit of pursuing the associated employees with enforcement resources would be very low. Our analysis found that the estimated average tax impact per invalid W-2 is only about \$170 for those with withholding and about \$90 on those without withholding. In addition, with about 98% of these W-2s with invalid SSNs reporting less than \$30,000 in wages, many of the associated employees may not even be required to file tax returns.

Our primary means of dealing with egregious underwithholding is through our Withholding Compliance Program (WCP). For this program, we aggregate the wages and withholding on all W-2s reporting the same SSN, whether valid or invalid, and subject these amounts to our WCP criteria. (Employees who use more than one invalid SSN may be in the program more than one time since we have no way to aggregate these W-2s.) If an employee's aggregated W-2 information shows egregious underwithholding, we send a withholding "lock-in" letter to each of his/her employers. This letter is intended to ensure the employers withhold the correct amount of taxes on future wages paid to the employee. This is one of our most effective and least costly enforcement programs. Provided the employer complies with the lock-in letter, the IRS will receive close to the correct amount of income taxes, regardless of whether the employee files a return or not. WCP also will identify the small percentage of employees with invalid SSNs that are egregious under-withholders.

In our TY 2004 study of W-2s with invalid SSNs, we did not include any analysis of withholding rates for Social Security and Medicare taxes. However, the IRS and SSA use the Combined Annual Wage Reporting (CAWR) program to identify discrepancies between the amounts of withheld Social Security and Medicare taxes that employers report to SSA on W-2s and the amounts reported to the IRS on Forms 941. The SSA corresponds with the employer on cases that do not balance. Any cases not resolved after this reconciliation are sent to the IRS for further action.

Question: In your testimony, you discuss a survey of 297 employers the IRS has recently concluded. You said it points out the difficulties associated with assessing or sustaining a penalty for employers with high rates

of name/SSN mismatches in their wage reports: document fraud, high employee turnover, and the lag time from when an employee earns wages and when the IRS notifies an employer of the mismatch. Given these difficulties, would it be a better solution to allow the IRS to share some limited amount of tax information with the DHS so that they could target immigration law enforcement, rather than pursue IRS penalties?

Answer: As you know, comprehensive immigration reform—including border security, interior enforcement, and a temporary worker program—is a top Administration priority. The Administration believes that worksite enforcement is critical to the success of immigration reform. I am well aware of various legislative proposals to help address this problem, including requiring more information sharing between Federal agencies. Whatever the ultimate solution, we have to try to minimize the negative consequences on employers, employees and our national economy. As a former Deputy Commissioner at INS, I am sensitive to the need for a system of immigration that functions effectively. Having said that, any significant change requiring improved information sharing between Federal agencies or between Federal agencies and employers must account for protections found in section 6103 of the Internal Revenue Code. This section protects taxpayers from having their tax return information shared with third parties. We must make sure that any change in the current system encourages the type of behavior that we desire from both employees and employers.

Question: Given the current difficulties of correcting wage reports due to high employee turnover and the lag time between when an employee earns wages and when the IRS notifies an employer of a mismatch, would a better solution be to require employers with high mismatch rates to participate in the Basic Pilot?

Answer: The intent of the Basic Pilot program, developed by DHS, is to inform employers whether their employees are authorized to work in the United States. From a tax administration perspective, however, there is no distinction between taxpayers who are authorized to work in this country and those who are not. Further, the ability of an employer to verify an employee's work eligibility does little to ensure that the employee will file an income tax return.

Question: The SSA testimony stated that SSA and the IRS have established an interagency effort and are working to resolve issues and cooperate on efforts that cross agency lines. Could you describe what these interagency Committees have discussed, and what have been some of the results of their deliberations?

Answer: We believe the SSA testimony refers to a group of executives from the IRS and SSA that meets semi-annually to discuss issues of mutual interest and to determine how the two agencies can best work together to address these issues. The most recent meeting occurred in November 2005 and included discussions on:

- The long-term viability of the electronic reporting system for ERISA reports sent to SSA (agreed to convene joint group to pursue solutions)
- Allowing IRS employees outside of the Philadelphia campus to have electronic access to wage reporting data maintained by SSA (agreed that the IRS would submit a formal proposal)
- Providing SSA with regular updates of the IRS file which they use to authenticate users of SSNVS, a SSN verification system for employers (agreed to get appropriate individuals from both agencies together to discuss the issues)

Question: Some bills have been introduced that would prohibit employers from deducting business expenses for wages paid to unauthorized workers. What are your views on that option? Would it serve as an incentive for employers to use the Basic Pilot to verify their workers' employment eligibility? Would it make sense to expand that prohibition to any wages reported under mismatched names and SSNs?

Answer: While the intent of such proposals is to reduce the number of unauthorized workers and to create an incentive for employers to make additional efforts to correct mismatched names and SSNs, a rule prohibiting employers from deducting these wages would be difficult to administer and would also have a negative effect on tax compliance. We anticipate that it would be difficult to determine whether a business's deductions were attributable to wages paid to an unauthorized worker, even in an audit. Moreover, disallowing the deduction might make it less costly for employers to pay employees "under the table," thereby reducing employment taxes collected from the employer and providing more opportunity for employees to evade taxation. The Tax Code currently provides for penalties for failure to file correct information returns and payee statements. (Sections 6721–6725).

Question: Has the IRS audited employers who use day-laborer sites to determine if they are withholding income taxes and paying Social Security and Medicare payroll taxes on their employees? If employers are hiring people under the table and not paying the appropriate taxes, does it depress wages for other American workers?

Answer: The IRS does not specifically target day-laborer sites in its employment tax examinations. However, all W-2s are subject to review for appropriate income tax withholding through our Withholding Compliance program. We address issues related to proper payments of Social Security and Medicare payroll taxes through the Combined Annual Wage Reporting program. (See response to #2 above.) Although the IRS uses such programs to address the issues of withholding and payment of appropriate taxes, we are not in a position to comment on the impact that nonpayment of these taxes may have on wages paid to other American workers.

Question: Section 6013 of the Internal Revenue Code was enacted to prevent the inappropriate use of confidential taxpayer information. It is based on the presumption that confidential taxpayer information should not be used for non-tax reasons except in compelling circumstances. In your opinion, to what extent does enforcement of immigration or other laws justify an exception to that presumption? What safeguards would you recommend to ensure that the use of confidential taxpayer information be limited to compelling circumstances?

Answer: We believe that any use of confidential taxpayer information for non-tax purposes carries a risk of reducing voluntary compliance with the tax laws, undermining the primary objective of the IRS and reducing the availability and utility of the information sought. Administering the tax system is the responsibility of this Agency, it is institutionally difficult for us to weigh other objectives against the value of high rates of compliance with the tax law.

Similarly, it is not within our expertise to advise on the mechanisms that should be utilized to balance objectives, such as the value of enforcing the immigration laws, against the value of voluntary compliance with the tax laws.

For an analysis of the appropriate balance between taxpayer privacy and other important policy concerns, we refer you to a study produced by the Treasury Department. The report states that "additional exceptions to the confidentiality of taxpayer information under section 6103 should be granted in rare circumstances and only where the Agency can demonstrate, using established criteria, a need for the information that clearly outweighs taxpayer privacy interests and concerns about the effects on voluntary tax compliance." *Report to The Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions*, Office of Tax Policy, Department of the Treasury, at 69 (October 2000), available at <http://treas.gov/offices/tax-policy/library/confide.pdf>

[Questions submitted by Chairman McCrery to the Honorable Stewart A. Baker and his responses follow:]

Question: If the Basic Pilot were made mandatory, is it likely that we would see an increase in the use of counterfeit documents like the SSN card? Would we see an increase in identity theft?

Answer: In our August 2005 report on employment verification and worksite enforcement efforts, we said that the Basic Pilot Program has potential to help enhance the verification process and substantially reduce document fraud (use of counterfeit documents) but is unable to detect identity fraud (fraudulent use of valid documents or information belonging to others).¹ A mandatory Basic Pilot verification could make some counterfeit documents more difficult to use to falsely demonstrate work authorization. For example, if an unauthorized worker presented counterfeit documents containing false information, the Basic Pilot program would not confirm the worker's eligibility because the Employment Eligibility Verification Form I-9 information, such as a false name or Social Security number (SSN), would not match the Social Security Administration's (SSA) and the Department of Homeland Security's (DHS) database information. An increase in counterfeit Social Security cards, specifically, seems unlikely because the Social Security card is only one of 15 documents that can be used to prove eligibility to work. While workers are required to provide a Social Security number, they are not required to show the card to obtain employment. In addition, use of a counterfeit Social Security card with a false name or number could be detected by employers using the Basic Pilot.

¹ GAO, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, GAO-05-813 (Washington, D.C.: August 31, 2005).

On the other hand, the Basic Pilot's verification system cannot detect identity fraud. The fraudulent use of documents containing the real names, SSNs, and alien identification numbers of work-authorized persons could be used to demonstrate work eligibility and would not be detected through Basic Pilot's verification system. An unauthorized worker could present valid documentation belonging to a work-authorized person or could present counterfeit documentation that contains valid information and appears authentic. In either instance, the Basic Pilot may verify the employee as work-authorized because the documentation matched SSA and DHS data. It is possible, therefore, that identity fraud could increase with mandatory verification, as unauthorized workers could have new incentives to use identities of work-authorized individuals. However, the extent to which identity fraud might increase and unauthorized work might decrease is unknown. DHS is currently considering possible ways to enhance the Basic Pilot Program to help detect cases of identity fraud.

The requirements established in the Real ID Act of 2005 for the issuance of state driver's licenses and identification documents, have the potential to improve identity verification.² However, this form of identification is one of 20 documents acceptable for proving identity in the I-9 process, and identity fraud could still be possible.

Question: Several bills introduced this Congress would require employers to verify the employment eligibility of new hires through a database that combines data from the Social Security Administration's (SSA's) SSN applications and the U.S. Department of Homeland Security's (DHS's) immigration records. Currently, in the Basic Pilot program, the two sources of data are kept separate, and each agency independently verifies the information for employers without sharing it with the other agency. Is there any particular advantage or disadvantage to combining the databases? Would it increase the accuracy of the data? Would it increase the speed of verifications? Would it improve program administration? What effect might it have on the privacy of personal information?

Answer: Combining DHS's immigration records and SSA's cardholder data likely would not improve the employment eligibility verification process because the existing problems in the verification process are not related to the data sources being kept separate. Using two different databases to verify different pieces of information does not hinder the verification process, as long as the employment verification program is able to query the appropriate databases to verify the relevant information. Delays identified in Basic Pilot's verification process are often the result of delays entering data into DHS's database after DHS makes its initial work eligibility determinations. Because its database is not up-to-date, DHS employees need to verify some work authorizations manually. Combining the databases would not increase the speed of verifications if the speed of DHS's data entry remains unchanged.

Combining the databases would also not improve the accuracy of results provided to the employer because the source of the information would remain the same. SSA's cardholder identification file is used to verify name, SSN, and citizenship, and DHS's immigration records are used to verify employment authorization using an alien identification number. Because SSA's database contains demographic information collected when the SSN was issued or updated, as with a name change, its database does not reliably contain up-to-date information on the work authorization status of noncitizens. Although combining the two could update SSA's work authorization data, combination is unnecessary for establishing work authorization.

SSA's program administration might be slightly improved by linking the databases and updating some SSA information on work authorization, but combining them would not be necessary to achieve these improvements. For example, if DHS's data could be used to automatically update SSA's work authorization information, SSA's Nonwork Alien file could potentially become more accurate. However, linking the two databases may be challenging due to the lack of a common identifier. It is not clear how difficult the task of linking the two databases might be, but our ongoing work for the Subcommittee on coordination between SSA and DHS will address these issues.

In addition to providing little, if any, advantage in terms of speed or accuracy, there are possible disadvantages to combining the databases. These databases were developed to aid in the administration of two different programs. Combining them could detract from their intended purposes and could prove costly.

Question: In an August 2005 report, the U.S. Government Accountability Office (GAO) said that document and identity fraud have undermined the

²P.L. 109-13, 49 U.S.C 30301 note.

“Form I-9” process—the process required under immigration law by which employers verify the identity and employment eligibility of newly hired employees. The GAO recommended a reassessment of the Form I-9 process, including the possibility of reducing the number of acceptable work eligibility documents. Some bills have been introduced this Congress that would make the SSN card the sole identity and employment eligibility document employers could accept, or alternatively would use a combination of an SSN card and a State driver’s license or ID card that complies with standards established in the REAL ID Act (P.L. 109-13) or a federally-issued ID document. Do you have any thoughts or recommendations on how to reduce the documents employees are required to present to prove identity and employment eligibility?

Answer: DHS is currently assessing possible revisions to the number of acceptable work eligibility documents but has not established a target timeframe for completing this assessment. Completion of this assessment and issuance of final regulations on acceptable work eligibility documents should strengthen the current employment verification process and make it simpler and more secure. In addition to a reduction in the number of acceptable work eligibility documents, enhancing the integrity of identity and work eligibility documents is also an important consideration in making the employment verification process more secure. We have previously reported on the possible use of biometrics in verification and identification processes.¹ Biometrics can theoretically be very effective personal identifiers because the characteristics they measure are thought to be distinct to each person. While biometrics show promise in enhancing verification and identification processes, we have also reported on the tradeoffs for using biometric indicators, such as concerns regarding the protections under current law for biometric data and the absence of clear criteria governing data sharing.

Because the Social Security card is of limited use in proving eligibility to work and does not verify identity at all, it is a weak document in the I-9 process, which requires employers to verify the identity and work authorization of newly hired employees. The Social Security card is one of 15 documents that may be used to establish an individual’s eligibility to work. The card has had many different versions and is easily counterfeited. There is also a history of vulnerabilities in the process of issuing numbers to noncitizens, including limited verification of identity and work authorization documents. In addition, while Social Security cards issued for nonwork purposes carry the label “Not Valid for Employment,” nonwork cards issued before May 1982 do not include this statement. We have work ongoing on Social Security card enhancement that will be issued later this month.

Under the Real ID Act of 2005, state-issued driver’s licenses and identification documents could improve the identity portion of the employment eligibility verification process. Because the licenses will be required to include physical security features to prevent counterfeiting and tampering, these identification documents could make the I-9 process less vulnerable to fraud and counterfeiting. However, even under Real ID Act standards, identity theft could be possible, and each additional document permitted to establish identity and eligibility to work is another opportunity for document fraud and identity theft.

Question: In a February 2005 report, the GAO said that the SSN verification services for paper or phone requests require the worker’s date of birth, but the electronic requests do not. Would correcting this inconsistency in SSN verification services help prevent individuals from using the SSNs of children to engage in unauthorized work?

Answer: Requiring the worker’s date of birth for SSN verification services could help prevent use of children’s SSNs for unauthorized work if employers used the services more frequently and if they refused to hire persons with name, SSN, and birth date combinations that obviously belonged to children. Requiring the date of birth could also help identify other types of fraud, wherein the worker is young, but the SSN is assigned to someone who would be much older or vice versa. Because the birth date is one additional piece of information that would have to match SSA’s data, persons using this information fraudulently would need more than a name and SSN.

[Questions submitted by Chairman Ramstad to the Honorable Mark W. Everson and his responses follow:]

¹GAO, *Technology Assessment: Using Biometrics for Border Security*, GAO-03-174 (Washington, D.C.: Nov. 15, 2002).

Question: During the hearing, I asked you if an employer hired 100 hundred employees on the same day and they all submitted signed W-4s using the same SSN would the IRS have the ability to penalize the employer. You responded that you thought the IRS would have the ability to penalize the employer. Treasury Regulation 301.6724-1(g) indicates that if an employer receives a signed W-4 from an employee that the employer would have satisfied due diligence requirements, and therefore would not be penalized. Given this provision in the regulations, please explain why you think the IRS would have the ability to sustain penalties in the case I described.

Answer: An information return penalty is waived for reasonable cause if the filer made an initial and, if necessary, annual request that the payee provide an accurate SSN/TIN, or establishes that due diligence was otherwise used. An information return filer may establish reasonable cause for failure to include required information by showing that the failure was due to events beyond the filer's control, including actions of the payee providing the necessary information, and that the filer acted in a responsible manner. Acting in a responsible manner means that the filer exercised reasonable care, which is that standard of care that a reasonable prudent person would use under the circumstances in the course of its business in determining its filing obligations and undertook significant steps to avoid or mitigate the failure to provide correct information. Accepting the same SSN for 100 employees on the same day would not qualify for penalty waiver under the prudent person standard.

Question: In your testimony you said that increased enforcement of accurate reporting of names and SSNs could have a negative revenue impact by driving workers into the underground economy. Has the IRS done any empirical studies to determine the effect of increased enforcement?

Answer: We have not specifically measured the impact of enforcement efforts targeting name/SSN mismatches on Forms W-2. However, based upon our recent compliance check of a limited number of employers, we found that employers relied upon information provided by employees. Although employers unknowingly reported mismatched names and numbers, many withheld and paid Social Security and employment taxes on behalf of their employees. Anecdotal evidence suggests that employees who deliberately provide false information to employers do so to remain anonymous to the IRS. Any enforcement effort may impact worker classification from employee to independent contractor, resulting in lost withholding opportunities. Additionally, such efforts could prompt a cash-based workforce to avoid information reporting entirely, since it is more likely that cash payments are not reported on information documents.

Question: It has been the law since 1996 that a person who receives a Social Security number solely for the purpose of receiving federal benefits is not supposed to be able to receive the Earned Income Tax Credit. However, it is my understanding that because of the failure to share information between SSA and IRS, that these individuals have been receiving the EITC every year. Do you have an estimate as to how much Earned Income Tax Credit dollars have been improperly paid out to individuals who have a Social Security number solely for the purpose of receiving federal benefits?

Answer: The IRS cannot estimate the amount of EITC dollars paid in error to individuals who have a SSN solely for the purpose of receiving Federal benefits. Although information passed on to the IRS from SSA since 1980 contains an indicator showing that an SSN recipient is not authorized to work in the United States, the data does not distinguish between those who receive an SSN in order to obtain government benefits from those who obtain an SSN for other purposes that currently may allow a person to qualify for EITC.

Question: There is a proposal in the President's Budget that would address the issue of individuals improperly receiving EITC refunds with an SSN issued solely for the purposes of receiving Federal benefits. How would the proposal address this problem?

Answer: In 1996, Congress enacted a provision (IRC sec. 32(m)) that was intended to deny the EITC to individuals who were not authorized to work in the United States. This provision requires EITC claimants to provide a valid SSN for themselves and their qualifying children. It explicitly denies the EITC to noncitizens who are not authorized to work in the United States but who, under clause (II) of sec. 205(c)(2)(B)(i) of the Social Security Act, obtain an SSN solely for the purpose of claiming government benefits (such as public assistance). The 1996 Act also gave the IRS the authority to automatically deny such claims during processing using "mathematical error" procedures. (Without mathematical error authority, the IRS can still deny ineligible claims through the examination process. However, more in-

eligible claims can be denied through the less labor-intensive mathematical error procedures.)

At the time of enactment, it was thought that this provision would effectively restrict EITC eligibility to U.S. citizens, permanent residents (“green card” holders), and other noncitizens who obtain an SSN because their visas authorize them to work in the United States. These individuals are entitled to obtain an SSN under clause (I) of sec.205(c)(2)(B)(i) of the Social Security Act.

However, Sec. 32(m) inadvertently allows some undocumented workers to receive the EITC. Until recently, it was possible for some individuals to receive social security numbers for reasons other than to obtain Federal benefits—e.g., to obtain a driver’s license in some states or, before the adoption of ITINs, to file a tax return. Further, while SSA records contain an indicator showing that an SSN holder is not authorized to work in the United States, the records do not distinguish between those who receive an SSN in order to obtain government benefits from those who obtain an SSN for other purposes. As a result, the IRS has never used its mathematical error authority to deny EITC claims of certain undocumented workers, for fear of denying the credit to individuals who are technically eligible (albeit undocumented workers).

In the FY 2007 budget, the administration is proposing that sec. 32(m) be rewritten to state that for purposes of the EITC, a valid SSN is one issued either to a citizen of the United States or pursuant to clause I of section 205(c)(2)(B)(i) of the Social Security Act. This modification would effectively deny EITC eligibility to individuals who were issued SSNs for any non-work reason—as was the intent of Congress in 1996. Further, this modification would allow the IRS to implement the existing math error authority to deny the EITC to undocumented workers, because individuals identified by SSA as unauthorized to work in the United States would generally be ineligible for the EITC.

Question: The House recently passed the “Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005,” which would allow the Secretary of the Department of Homeland Security to access any information maintained by any department or agency of the government concerning any person seeking any benefit or privilege under immigration laws. Does the IRS believe that this provision would apply to taxpayer returns or taxpayer information?

Answer: The Administration is working on a legal determination as to whether this provision would apply to taxpayer returns or taxpayer information. From a tax administration perspective, the IRS recommends that the legislative provision reference 26 USC § 6103. In the Administration’s legislative discussions, we have proposed language that specifically refers to § 6103.

[Questions submitted by Chairman Ramstad to the Honorable James B. Lockhart and his responses follow:]

Question: Does SSA share the opinion of DHS that the non-work alien file is inaccurate and unusable for DHS agents seeking individuals who performed unauthorized to work? Has DHS informed SSA of the problems it has experienced with the non-work alien file?

Answer: The information provided to the Department of Homeland Security (DHS) is based on wages the Social Security Administration (SSA) posts to the earnings records of the individuals assigned the particular Social Security numbers (SSN). The information in the report to DHS accurately reflects these posted earnings. The report also includes the most current data SSA has to provide to DHS. The data is in the format agreed to in a Memorandum of Understanding (MOU) between SSA and DHS. It is unclear why the information contained in the file would be unusable for DHS agents seeking individuals who performed unauthorized work.

8 U.S.C. § 1360(c)(2) required SSA to provide information concerning the earnings reported on SSNs issued to aliens not entitled to work under the Immigration and Nationality Act. This statute provides:

“If earnings are reported on or after January 1, 1997, to the Social Security Administration on a Social Security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Attorney General with information regarding the name and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings. The information shall be provided in an electronic form agreed upon by the Commissioner and the Attorney General.”

SSA entered into a data-sharing MOU with the Immigration and Nationality Service (INS) in 1999 to implement the requirement regarding reporting earnings on aliens not authorized to work. SSA began sending this information to INS for

Tax Year 1996 in 1998, and has continued sending the file on an annual basis. The MOU transitioned to DHS when the functions of INS migrated to DHS. SSA is currently reviewing this MOU to determine if it needs to be updated. In addition to providing the data as required by the MOU, at DHS' request, SSA provides the identical information to DHS in a file that could be used on a personal computer. This file format was first sent in 2004 for TY 2002. SSA continues to send both files to DHS.

[Questions submitted by Chairman Ramstad to the Honorable Stewart A. Baker and his responses follow:]

Question: In your testimony, you said that DHS sees a clear benefit to receiving from the Social Security Administration portions of the no-match data that is currently protected by taxpayer privacy laws. Yet you did not specify exactly what information DHS proposes that it receive. Can you provide us with specifics about what DHS thinks it should receive? For example, are you seeking information relating to all employers with mismatches, or just certain employers with egregious problems?

Answer: DHS would emphasize the need for information relating to all employers with earnings that appear in the Social Security Administration's (SSA) Earnings Suspense File (ESF). The fact that a large percentage of employees and employers who receive SSA "no match" letters fail to correct or address these discrepancies indicates that there is widespread use of fraudulent Social Security numbers. The SSA Inspector General has also acknowledged that unauthorized employees or illegal immigrants account for a significant, growing portion of entries in the ESF.

With access to the ESF data, DHS would be able to address targeted weaknesses in critical infrastructure and other national security related areas and industries, in addition to identifying and targeting enforcement efforts toward the obvious egregious employers. Access to this data should be broad enough for DHS to target known fraud schemes such as use of a Social Security Number by multiple employees or use of Social Security Numbers belonging to dead persons or persons too young to work report income contributions. Data access must be sufficiently broad to allow DHS to address and target new fraud schemes as they emerge. Access to the ESF data would enhance hundreds of existing worksite enforcement investigations by helping to refute an employer's "good faith" defense.

DHS is looking to establish a good, flexible data-sharing relationship with the SSA to address today's most apparent problems, but also to adjust and respond to future challenges related to illegal immigration. Once the widespread use of fraudulent Social Security Numbers is eliminated, criminal organizations and other immigration violators will look for other ways to circumvent the immigration and employment laws. DHS must be ready to respond to these new challenges with the appropriate tools.

Question: In 1996, Congress required SSA to provide DHS with a data file called the Non-Work Alien file, which contains information on wages reported to Social Security numbers issued for non-work purposes. For years, the DHS did not use this information because of computer compatibility problems. You indicated at the hearing that DHS was not ready to say the file was unusable. Can you explain what DHS is doing to analyze this information, and explain if and when this can be used for immigration enforcement purposes?

Answer: From 1997 to 2004, SSA forwarded the NWF to the INS and later to DHS as required by law and consistent with a Memorandum of Understanding. However, formatting issues made it difficult to use the NWF. Beginning in February 2005, DHS/ICE and SSA worked together to convert that data into a more usable format.

During FY 2006, DHS successfully accessed and analyzed NWF data (a list of names and SSNs of individuals originally issued) for the first time and conducted DHS immigration record checks on a sampling of aliens' names and other information from the NWF. Preliminary results of these checks indicate that only 34 percent of the individuals named in the file are actually authorized to work in the United States, an indication that this information could be valuable in conducting enforcement investigations. On April 4, 2006, ICE received the most recent NWF data from SSA and has started to analyze this new dataset.

[Submissions for the record follow:]

Rockwall, Texas 75087
 February 10, 2006

Social Security Committee
 House Ways and Means
 U.S. Congress
 Washington, D.C.

Dear Committee Members;

Thank you for this opportunity. I would like to express the need of the elimination of the GPO and WEP. These two clauses do not uphold the integrity and intent of the Social Security Fund. The punishment is given to undeserving people and in effect takes away something the common people have and need. Please remove the bill from the committee and bring the vote before the full house.

Thank you,

Robert Davis

Center for Economic Progress
 Consumer Federation of America
 Consumers Union
 National Consumer Law Center
 National Council of La Raza
 National Employment Law Project
 National Immigration Law Center
 February 15, 2006

The Honorable Jim Ramstad
 Chairman, Subcommittee on Oversight
 United States House of Representatives
 Washington, D.C.

The Honorable Jim McCrery
 Chairman, Subcommittee on Social Security
 United States House of Representatives
 Washington, D.C.

Dear Congressman Ramstad and Congressman McCrery:

The undersigned groups, comprised of consumer advocates, civil rights organizations, free tax preparation programs, and immigrant rights advocates, collectively represent and serve thousands of low-income taxpaying immigrant families. All of us strongly oppose any changes to Section 6103 of the Internal Revenue Code that would permit wholesale sharing of information between the Internal Revenue Service and Department of Homeland Security (DHS). We also attach to this written testimony a letter from October 2003, in which over 150 organizations expressed similar opposition to information sharing by IRS to DHS about immigrant taxpayers.

The February 13 edition of Tax Notes reported that one focus of the February 16, 2006 hearing will be potential data sharing between IRS, DHS and the Social Security Administration. We are adamantly opposed to any proposal that allows the IRS to routinely send tax information to DHS, including information about the Individual Tax Identification Number (ITINs), tax returns filed with ITINs, ITIN applications (IRS Form W-7), etc.

One of the hallmarks of the current tax code is confidentiality of taxpayer information. The IRS Code presumes that taxpayer information, which can be highly sensitive, is private and confidential unless subject to a specific exception. This confidentiality both protects taxpayers and encourages compliance with tax laws.

To remove the protective cloak of confidentiality for an entire class of taxpayers violates a fundamental principle of the tax code established in the wake of prior abuses. It sets a dangerous precedent, and will discourage immigrants from complying with tax laws. Undocumented immigrants already face significant disincentives and barriers to filing their tax returns. If they know that IRS information is routinely sent to DHS—or even that there is a possibility that the information will be shared—current filers will be less likely to file their taxes in subsequent years, and non-filers will be less likely to obtain ITINs and become filers.

The National Taxpayer Advocate has noted similar concerns. According to the Tax Notes article cited above, the National Taxpayer Advocate expressed at a 2004 hearing before the Joint Subcommittees on this same matter that “‘fishing expeditions’

by other government agencies that could result from expanding section 6103 would lead to more illegal immigrants going underground from the IRS.”

Wholesale and undefined disclosure also will not assist in investigating terrorism or criminal activity, because it will discourage millions of taxpayers from filing returns. This will hurt, not help, national security as well as tax compliance. When immigrants file tax returns, federal law enforcement and intelligence authorities can access that information IF there is evidence of criminal or terrorist activity. However, if immigrants as a group are discouraged from participating in the tax system, there will be no documents and no paper trail to share.

If you have any questions or comments on our submission, please feel free to contact Chi Chi Wu at 617-542-8010 or cwu@nclc.org. Thank you for your consideration.

Sincerely,

Chi Chi Wu
National Consumer Law Center
(on behalf of its low-income clients)

Julie Kruse
National Community Tax Coalition

David Marzhal
Center for Economic Progress

Catherine K. Ruckelshaus
National Employment Law Project

Marielena Hincapie
National Immigration Law Center

Beatriz Ibarra
National Council of La Raza

Dear Commissioner Everson, Assistant Secretary Olson and Assistant Secretary Abernathy:

The undersigned stakeholders comprised of community and civil rights organizations, tax and financial services agencies, labor unions, and consumer and immigrant rights advocates, collectively represent and serve thousands of low-income tax-paying immigrant families. We are writing to express our concerns that the Internal Revenue Service (IRS) is contemplating significant changes to the Individual Taxpayer Identification Number (ITIN) program.

We strongly support IRS efforts to protect the integrity of the ITIN. However, we oppose any measures by the Treasury Department or the IRS to limit the issuance of ITINs or to prohibit states, financial institutions, and other entities from using ITINs to provide hard working and taxpaying low-income immigrants with banking or other services. We also oppose any measure to make ITIN information available to the Department of Homeland Security (DHS), including the Bureau of Citizenship and Immigration Services (BCIS) and Bureau of Immigration and Customs Enforcement (ICE) beyond what is currently permitted in IRS Code § 6103. These measures would be both ineffective in responding to national security concerns while being harmful to individual immigrant workers, their families, and their communities.

In creating the ITIN in 1996, the IRS enabled millions of hard working immigrants to pay their taxes and file tax returns as required by law. If IRS limits the issuance of ITINs, as a recent Washington Times article suggests, immigrants ineligible for Social Security Numbers will be discouraged from obtaining ITINs and thus, from filing tax returns. Because the ITIN is accepted by many banks, limiting its use would force tens of thousands of immigrants back into the cash economy. The IRS and Treasury will be harming its own institutional interests, and rather than strengthening national security, it will be making our communities less secure.

Ensuring Tax Compliance

ITINs are an essential tool for the IRS to encourage immigrant workers to file tax returns and assume the rights and responsibilities offered under the Internal Revenue Code to more than 120 million individual taxpayers. Without ITINs, hundreds of thousands of immigrant workers would never file income tax returns and not have an opportunity to build the documented economic track record that tax compliance facilitates. Prior year tax returns are often required of consumers seeking to secure credit or loans that serve as stepping stones to economic success such as purchasing a home or a business. Promoting the growth of an underclass of non-compliant taxpayers is not in the interests of the IRS or Treasury as it will place

a greater burden on subsequent enforcement activities that require a redeployment of scarce IRS resources.

Sharing of Confidential ITIN Information

The August 29 edition of Tax Notes reported statements by IRS Commissioner Everson saying he has made loosening the nondisclosure rules a top priority. The suggestion in this and other articles that the IRS may seek legislation to authorize routine sharing of ITIN information with immigration authorities is of grave concern.

We are adamantly opposed to any proposal that allows the IRS to routinely send ITIN information to the Bureau of Immigration and Customs Enforcement (ICE). One of the hallmarks of the current tax code is confidentiality of taxpayer information. The IRS Code presumes that taxpayer information, which can be highly sensitive, is private and confidential unless subject to a specific exception. This confidentiality both protects taxpayers and encourages compliance with tax laws.

To remove the protective cloak of confidentiality for an entire class of taxpayers violates a fundamental principle of the tax code established in the wake of prior abuses. It sets a dangerous precedent, and will discourage immigrants from complying with tax laws. Undocumented immigrants already face significant disincentives and barriers to filing their tax returns. If they know that IRS information is routinely sent to ICE—or even that there is a possibility that the information will be shared—current filers will be less likely to file their taxes in subsequent years, and non-filers will be less likely to obtain ITINs and become filers.

Furthermore, the IRS does not need such a wholesale exception to taxpayer privacy in order to protect national security. Subsection (i)(7) of IRS Code section 6103 permits the IRS to disclose tax information (other than taxpayer return information) to federal law enforcement or intelligence agencies investigating a terrorist incident, threat, or activity. Subsection (i)(3)(A) permits IRS to disclose tax information (other than taxpayer return information) to alert other federal agencies of non-tax violations of federal criminal law. Thus, section 6103 already contains a number of specific exceptions that permit information-sharing in well-defined circumstances. Wholesale and undefined disclosure, on the other hand, will not assist in investigating terrorism or criminal activity, but will discourage millions of taxpayers from filing returns.

Again, encouraging immigrants to obtain ITINs can only help, not hurt, national security. When immigrants obtain ITINs and file tax returns, federal law enforcement and intelligence authorities can access that information IF there is evidence of criminal or terrorist activity. However, if immigrants as a group are discouraged from seeking ITINs, there will be no documents and no paper trail to share.

Bank Accounts

ITINs are essential to bringing the unbanked into the financial mainstream. Until the advent of ITIN, banks could not open interest-bearing bank accounts for those without a Social Security Number, because of the requirement to report interest income to the IRS. With the ITIN, banks can open accounts for hardworking immigrants and still comply with tax laws. Thus, ITINs serve a tax purpose with respect to bank accounts.

If the IRS restricts the issuance or use of ITINs, it may create confusion among banks or might cause banks to refuse to accept ITINs. This will set back successful efforts by banks, credit unions, and the Treasury Department to bring more immigrants into the financial mainstream. It will have an impact on the economic future of their children. Today's non-citizen is likely to be eligible for a Social Security Number tomorrow, and is likely to be the parent of citizen children. If that immigrant is not banked now, it is less likely she will be banked in the future and that her children will participate in the banking mainstream.

In addition to allowing immigrants to build assets and avoid high cost financial services, such as check cashers, payday lenders, couriers, money transmitters, and the like, bank accounts are important for immigrants because of the need to remit money back to their countries of origin. Federal bank regulators prefer that international money transmissions be accomplished through banks and thrifts, because in comparison to other financial providers, these institutions are subject to federal regulation and oversight. Bank accounts also help deter robberies and assaults against law-abiding immigrants, who often become the target of criminals because they are known to carry large amounts of cash on payday.

Conclusion

It is for these reasons that the undersigned stakeholders urge the Treasury Department and the IRS to desist from efforts to restrict the issuance and use of the ITIN or to share ITIN information with immigration agencies, and allow immigrant

taxpayers to file their taxes and continue contributing to this country's economy and general safety.

We will be contacting you shortly to request a meeting with the appropriate representatives from Treasury and the IRS and a small group representing the undersigned to follow up on these concerns.

Respectfully submitted,

David Marzahl
Executive Director

Jean Ann Fox
Consumer Federation of America

Salvador Gonzalez
Center for Economic Progress

Janell Duncan
Consumers Union

Chi Chi Wu
National Consumer Law Center
(on behalf of its low-income consumers)

Michele Waslin
Brenda Muniz
National Council of La Raza

Rebecca Smith
National Employment Law Project

Marielena Hincapie
Josh Bernstein
Joan Friedland
National Immigration Law Center

Organizations signing in support:

Alianza del Pueblo (Knoxville, TN)
American Federation of Labor–Congress of Industrial Organizations
(Washington, DC)
American Friends Service Committee (Washington, DC)
American Immigration Lawyers Association (Washington, DC)
Amigos Center (Fort Myers, FL)
Asian American Legal Defense & Education Fund (New York, NY)
Asian Law Caucus (San Francisco, CA)
Asian Pacific American Legal Center (Los Angeles, CA)
Asociacion Tepeyac de New York (New York, NY)
Association of Community Organizations for Reform Now—ACORN
(Washington, DC)
Baltimore CASH Campaign (Baltimore, MD)
Bilingual Services (China Grove, NC)
Boston EITC Campaign (Boston, MA)
Boulder County Safehouse (Boulder, CO)
Brighton Park Neighborhood Council (Chicago, IL)
Broward Immigration Coalition (Coral Springs, FL)
Cabrillo Economic Development Corporation (Saticoy, CA)
Campaign for Working Families (Philadelphia, PA)
Caribbean Immigrant Services, Inc. (Jamaica, NY)
Carlos Rosario International Career Center and Public Charter School
(Washington, DC)
CASA of Maryland, Inc. (Silver Spring, MD)
Catholic Center (Huntingburg, IN)
Catholic Diocese of Richmond (Richmond, VA)
Center for Community Self-Help (Durham, NC)
Center for Hispanic Policy & Advocacy (Providence, RI)
Center For New Community, Iowa Project (Des Moines, IA)
Center for Training and Careers, Worknet (San Jose, CA)
Central American Resource Center (Los Angeles, CA)
Centro de Acción Latino (Greensboro, NC)
Centro Legal de la Raza (Oakland, CA)
Children's Defense Fund (Washington, DC)

Children's Defense Fund Minnesota (St. Paul, MN)
 Children's Services Council of Broward County (Plantation, FL)
 Community Comprehensive Social Services (Hallandale, FL)
 Community Tax Aid, Inc. (Washington, DC)
 Conexión Américas (Nashville, TN)
 Corazón, Inc. (Cary, NC)
 Council Migration Services (Philadelphia, PA)
 Day Spring (Georgetown, IN)
 DC Employment Justice Center (Washington, DC)
 El Centro, Inc. (Kansas City, KS)
 El Pueblo (Raleigh, NC)
 Equal Justice Center (Austin, TX)
 FaithAction International House (Greensboro, NC)
 Family Economic Success Services (a project of the Piton Foundation)
 (Denver, CO)
 Farmworker Association of Florida (Apopka, FL)
 Farmworker Legal Services of New York (New Paltz, NY)
 Fellsmere Community Enrichment Program (Fellsmere, FL)
 First Christian Church (Shelbyville, KY)
 Florida Immigrant Advocacy Center (Miami, FL)
 Garibay Tax Services (Santa Ana, CA)
 Grassroots Collaborative (Chicago, IL)
 Greater Boston Legal Services (on behalf of its low-income clients) (Boston, MA)
 Greater Upstate Law Project, Inc. (Albany, NY)
 Grupo de Apoyo e Integración Hispanoamericana (Allentown, PA)
 Guadalupe Center (Huntingburg, IN)
 Harry H. Dow Memorial Legal Assistance Fund (Boston, MA)
 Hebrew Immigrant AID Society (Philadelphia, PA)
 Hispanic Committee of Virginia (Falls Church, VA)
 Hispanic Community Development Center (Dudley, NC)
 Hispanic Ministry—Diocese of Joliet (Kankakee, IL)
 Hispanic Organizations Leadership Alliance (Takoma Park, MD)
 Housing Development Corp. of Northwest Oregon (Hillsboro, OR)
 Housing Resource Center of Jane Addams Hull House (Chicago, IL)
 Hotel Employees & Restaurant Employees International Union (Los Angeles, CA)
 Illinois Coalition for Immigrant and Refugee Rights (Chicago, IL)
 Immigrant Legal Advocacy Project (Portland, ME)
 Immigrant Legal Resource Center (San Francisco, CA)
 Immigrant Rights Network of Iowa and Nebraska (Des Moines, IA)
 Immigration Advocacy Services (Astoria, NY)
 Instituto del Progreso Latino (Chicago, IL)
 Interfaith Leadership Project (Cicero, IL)
 Iowa Coalition Against Domestic Violence (Des Moines, IA)
 Irish Immigration Center (Boston, MA)
 Jewish Community Action (St. Paul, MN)
 Jobs and Affordable Housing Coalition (Minneapolis, MN)
 JUNTOS (Philadelphia, PA)
 Just Harvest (Pittsburgh, PA)
 Korean American Resource and Cultural Center (Chicago, IL)
 Korean Resource Center (Los Angeles, CA)
 La Raza Community Resource Center (San Francisco, CA)
 Labor Council for Latin American Advancement
 Latino Community Credit Union (Durham, NC)
 Latino Community Development Center (Durham, NC)
 Latinos United for Change and Advancement (Madison, WI)
 Lawyers' Committee for Civil Rights (San Francisco, CA)
 Legal Aid Society (National) (New York, NY)
 Legal Aid Society of Minneapolis (Minneapolis, MN)
 Lehigh Valley Immigrant Workers' Rights Coalition (Allentown, PA)
 LexLinc Community Development Federal Credit Union (Lexington, KY)
 Little Village Community Development Corporation (Chicago, IL)
 Los Compañeros (Durango, CO)
 LULAC Council 4609 (Richmond, VA)
 Massachusetts Immigrant & Refugee Advocacy Coalition (Boston, MA)
 Metropolitan Alliance of Congregations (Chicago, IL)
 Migrant Legal Action Program (Washington, DC)
 Milwaukee Council for the Spanish Speaking (Milwaukee, WI)
 Minnesota Coalition for Undocumented Students (West St. Paul, MN)

Mitchell Bank (Milwaukee, WI)
 Mountainlands Community Housing (Park City, Utah)
 National Asian Pacific American Legal Consortium (Washington, DC)
 National Association of Korean Americans, New York Chapter (New York, NY)
 National Center on Poverty Law (Chicago, IL)
 National Immigration Forum (Washington, DC)
 National Interfaith Committee for Worker Justice (Chicago, IL)
 National Korean American Service & Education Consortium (Los Angeles, CA)
 National People's Action (Chicago, IL)
 Nationalities Service Center (Philadelphia, PA)
 Nebraska Appleseed Center for Law in the Public Interest (Lincoln, NE)
 Network for Immigrant Justice (Eugene, OR)
 New Jersey Immigration Policy Network (Newark, NJ)
 New York Immigration Coalition (New York, NY)
 North Carolina Justice and Community Development Center (Raleigh, NC)
 North Carolina Justice Center (Raleigh, NC)
 Northern California Coalition for Immigrant Rights (San Francisco, CA)
 Office of Hispanic Ministry (Waterloo, IA)
 Pennsylvania Family Economic Self-Sufficiency Project (Swarthmore, PA)
 Pennsylvania Immigration and Citizenship Coalition (Philadelphia, PA)
 Pennsylvania Immigration Resource Center (York, PA)
 Pennsylvania Institutional Law Project (Philadelphia, PA)
 Philadelphia Citizens for Children and Youth (Philadelphia, PA)
 Philadelphia Council American Federation of Labor–Council of Industrial
 Organizations (Philadelphia, PA)
 Philadelphia Unemployment Project (Philadelphia, PA)
 Philadelphia Volunteers for the Indigent Program (Philadelphia, PA)
 Pinnacle Resources, LLC (Bakersfield, CA)
 Public Justice Center (Baltimore, MD)
 Refugee and Immigration Services, Catholic Diocese of Richmond (Richmond, VA)
 Rhode Island Coalition for Immigrants and Refugees (Providence, RI)
 Rural Opportunities Inc. (Rochester, NY)
 Service Employees International Union, Health Care Workers Local 250
 (Oakland, CA)
 Services, Immigrant Rights & Education Network (San Jose, CA)
 Somos Un Pueblo Unido (Santa Fe, NM)
 Southeast Asian Mutual Assistance Associations Coalition (Philadelphia, PA)
 Tennessee Immigrant and Refugee Rights Coalition (Memphis, TN)
 UCLA Labor Center (Pasadena, CA)
 UNITE (Washington, DC)
 United Network for Immigrants and Refugee Rights (Chicago, IL)
 United Way of King County (Seattle, WA)
 United Way of Southeastern Pennsylvania (Philadelphia, PA)
 USAction (Washington, DC)
 Virginia Justice Center (Falls Church, VA)
 Volunteer Accounting Service Team of Michigan (Detroit, MI)
 Washington Lawyers' Committee for Civil Rights and Urban Affairs
 (Washington, DC)
 Watts/Century Latino Organization (Los Angeles, CA)
 West Virginia School of Osteopathic Medicine (Lewisburg, WV)
 Westside Community Action Network Center Inc. (Kansas City, MO)
 Workers' Rights Law Center of New York (New Paltz, NY)
 Young Korean American Service and Education Center (Flushing, NY)
 Youth Empowerment Activists (Woodside, NY)